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U.S. Citizenship
and Immigration
Services



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FILE: EAC 02 108 53358 , Office: VERMONT SERVICE CENTER

Date: JAN 05 2005

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides home care staffing for senior citizens and seeks to employ the beneficiary as a staff training coordinator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation, and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief stating that the director mischaracterized the position, finding that the position was that of a registered nurse and not that of a staff training coordinator, and that as such the director's decision should be reversed and re-evaluated by another examiner.

The first issue to be discussed in this proceeding is whether the offered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a staff training coordinator. Evidence of the beneficiary’s duties was set forth in the petitioner’s letter dated February 1, 2002. According to this evidence the beneficiary would: develop and conduct programs to train employees how to understand senior citizen’s needs; predict future changes in senior citizens needs; and spot potential situations that may require professional attention. The petitioner requires a minimum of a bachelor’s degree in nursing for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would: train employees on how to understand senior citizens needs; predict changes in those needs; and identify potential situations that may require professional attention. The job description does not identify what type of needs must be understood by the petitioner’s staff, or what type of situations employees should be able to identify for professional referral. The description does not indicate the nature, level, and complexity of training that the beneficiary would provide. The director determined that the duties would be those of a nurse, apparently based upon the petitioner’s requirement of a nursing degree for the proffered position, but the record does not support that conclusion. It is impossible to determine from the vague and generic description of duties provided precisely what tasks the beneficiary would perform on a daily basis. It is incumbent upon the petitioner to describe the duties of the proffered position in such detail as to permit an analysis of the day-to-day functions to be performed by the beneficiary. This, the petitioner has failed to do. As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel positions among

similar organizations; the duties of the offered position are so complex or unique that they can be performed by an individual with a degree in a specific specialty; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), or (4). The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position, as the position is new in the petitioner's company. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The director also determined that the petitioner was not qualified to perform the duties of a nursing position. A determination of the beneficiary's qualifications to perform the duties of the proffered position cannot be made in this instance, as it cannot be determined precisely what the position entails.

On appeal, counsel states that the director failed to provide the petitioner with an opportunity to submit additional documentation because CIS requested information based on the wrong job offer. Based on the scant job duties of record, the director reasonably assumed the petitioner was seeking to fill a nurse position as it required a BSN in nursing of the successful job applicant. It is noted that the petitioner failed to submit further evidence about the job offer of staff training coordinator in response to the RFE, and has submitted nothing on appeal to elaborate on the duties of a staff training coordinator.

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.