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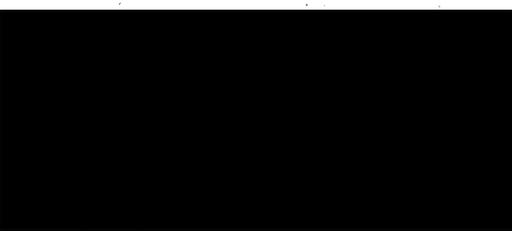
FILE: LIN 04 037 50050 Office: NEBRASKA SERVICE CENTER Date:

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 director of the service center 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 is a home health agency that seeks to employ the beneficiary as a health services coordinator. The petitioner, therefore, 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. On appeal, counsel submits a brief.

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.

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 is 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) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a health services coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary will direct and coordinate activities of health care services of the agency; develop and implement comprehensive plans, including policies, practices, and procedures that are designed to meet the company's goals and objectives for the delivery of health or medical services, in coordination with management and staff, while ensuring compliance with regulations and codes; develop and implement systems to track and monitor health services requirements; communicate health service status/improvements to appropriate physicians and administrative staff on a regular basis; consult with and serve as the liaison between the petitioner and medical, business, and community groups to discuss service problems, coordinate activities and plans, and promote health programs; conduct programs designed to educate patients and clients about health care systems; develop or expand medical programs and health services for research and rehabilitation; perform administrative tasks to ensure the optimum operation and delivery of patient care services; review complaints and suggestions and facilitate resolution of problems and concerns; formulate and negotiate health program contracts between insurance companies and health care providers, using standard agreement procedures and insurance company policies; develop partnership agreements with community health organizations, public health departments, and public and private institutions; coordinate services with specialists and outside care providers, ensuring compliance with quality and regulatory standards and maintaining and documenting all medication orders so that all healthcare needs of patients are met; prepare activity reports to inform management of the status and implementation plans of programs, services, and quality initiatives; and may prepare the budget or recommend allocation of funds for outside providers, suppliers, and equipment. The petitioner stated that a candidate must possess a bachelor of science in medical/health sciences.

The director found the submitted advertisements unpersuasive in establishing that the proposed position qualified as a specialty occupation. The director stated that the petitioner submitted no documentation to establish a past practice of hiring persons with a bachelor's degree in a specialty or show that the proposed duties are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specialty. Finally, the director stated that if the proffered position qualified as a specialty occupation, the beneficiary would not be qualified to perform the position. The director determined that the beneficiary was qualified to perform the duties of a microbiologist, but had failed seven business courses.

On appeal, counsel states that the proposed position is a specialty occupation. Counsel contends that the beneficiary's duties require specialized knowledge, which directly affects the well-being of patients and their treatment. Counsel emphasizes that the proposed position involves creating policies and procedures for patients' healthcare; such discretionary decision making, counsel maintains, indicates the proposed position's professional nature. According to counsel, the scientific knowledge and administrative expertise required to perform the proffered position cannot be acquired without a professional degree. Counsel states that the

beneficiary will oversee the provision of medical services, and points out that since most of the staff supervised by the beneficiary hold professional nursing degrees, the beneficiary should also possess a degree. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), counsel states that the duties of a medical/health services manager call for a combination of scientific knowledge and administrative or managerial skills, and the *Handbook* reveals that this position requires at least a bachelor's degree. Counsel cites to several cases to assert that a medical and health services manager, as described in the *Handbook*, would qualify as a specialty occupation. The beneficiary, counsel states, qualifies to perform the proposed position's duties.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation.

The proposed position seems analogous to a medical and health services manager that directs activities and daily operations in areas such as medical records, health information, and personnel; establishes and implements policies and procedures; and coordinates activities. The *Handbook* states:

Medical and health services managers must be familiar with management principles and practices. A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. Physicians' offices and some other facilities may substitute on-the-job experience for formal education.

The *Handbook* continues:

Graduates with bachelor's degrees in health administration usually begin as administrative assistants or assistant department heads in larger hospitals. They also may begin as department heads or assistant administrators in small hospitals or nursing care facilities.

The director stated that if the proposed position qualified as a specialty occupation, the beneficiary was unqualified for the position.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner's document entitled "Job Description – Health Services Coordinator" indicated that a candidate must possess a baccalaureate degree in medical/health sciences. Because the *Handbook* provides a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation, the AAO routinely refers to it to determine the educational requirements of certain occupations, such as the one in the immediate proceeding. The petitioner's educational requirement conflicts with the *Handbook's* information, which reports that graduates with bachelor's degrees in health administration usually begin as administrative assistants or assistant department heads in larger hospitals or as department heads or assistant administrators in small hospitals or nursing care facilities, and that a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions. Consequently, to qualify for the proposed position, the beneficiary must hold a degree that comports with the *Handbook's* information.

Although the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, he does possess a foreign degree that is determined by Morningside Evaluations and Consulting to be equivalent to a bachelor of science in microbiology. The evaluator also pointed out that the beneficiary completed coursework in the master of business administration program at the University of Santo Tomas in the Philippine Islands, and that the beneficiary's performance in the courses "was not stellar."

A bachelor of science in microbiology is not enough to qualify the beneficiary for the proposed position; according to the *Handbook's* information, employers require either a bachelor's degree in health administration or a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit

programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

There is no evidence in the record to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2), (3), or (4). Thus, CIS must evaluate the beneficiary's qualifications according to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains the beneficiary's transcript from the University of Santa Tomas, Manila, Graduate School, which indicates that the beneficiary enrolled in seven business courses. The credentials evaluator stated that the beneficiary's performance was not "stellar," and the director determined that beneficiary failed all seven courses. In the appeal brief, counsel states that the transcript shows a graduate school grading system whereby a grade of 1.0 is equal to 95 percent or above; thus, the beneficiary's lowest grade, 1.75, is equal to the passing grade of 87.5-89 percent. Counsel therefore states that the beneficiary earned impressive grades in his business courses.

The AAO concurs with counsel's interpretation of the grading system; thus, the beneficiary successfully completed 21 units towards a master's degree in business administration. Nonetheless, there is no evidence in the record showing that the university actually granted a master's degree in business administration to the beneficiary, which the *Handbook* relays is required to qualify for a medical services manager, an occupation that is similar to the proffered position. Consequently, the beneficiary's academic background is not sufficient to qualify him for the proffered position.

The record contains only a certificate of completion for a health care marketing course; it has no work experience letters. Thus, there is no evidence showing that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

The AAO notes its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within our power to formulate.

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 not sustained that burden.

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