

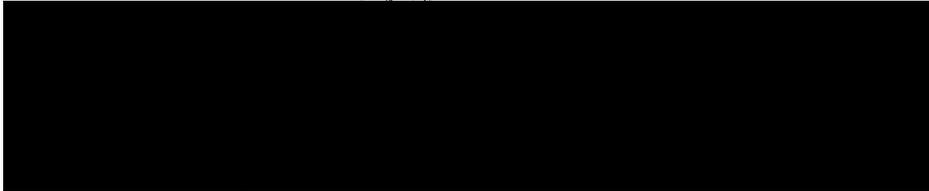
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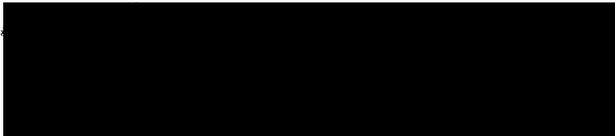
FILE: WAC 02 246 51847 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner, a nursing and rehabilitation facility, seeks to employ the beneficiary as a rehabilitation coordinator and to classify him 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 on the grounds that the proffered position is actually that of a head nurse or nurse administrator, which is not a specialty occupation.

Section 214(i)(1) of the 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.

As provided in 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 service center's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision, and (5) Form I-290B, the appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In a letter accompanying Form I-129 the petitioner stated that it was a skilled nursing facility established in 1998 and wished to hire the beneficiary as its rehabilitation coordinator. In response to the director's RFE, asking for a detailed description of the proffered position, the petitioner listed the duties of the job and the percentage of time required by each duty as follows:

- Plans, administers, and directs operation of health rehabilitation programs, such as physical, recreational, and speech therapies. Consults with medical and professional staff of other departments and personnel from associated health care fields to plan and coordinate joint patient and management objectives (10%).
- Conducts staff conferences and plans training programs to maintain proficiency of staff in therapy techniques and use of new methods and equipment to meet patients' needs (5%).
- Allocates personnel on basis of workload, space, and equipment available (5%).
- Selects appropriate rehabilitation providers and monitors service provision (5%).
- Recommends patient fees for therapy based on use of equipment and therapy staff (5%).
- Negotiates with management and brings about organizational and work practice change (10%).
- Liaises with the treating medical practitioner, with patients' consent, to establish initial diagnosis, treatment, prognosis and any provisional return to work requirements (10%).
- Maintains confidential and secure records of rehabilitation cases, in accordance with appropriate legislation (10%).
- Prepares departmental budget, makes capital equipment requests and controls expenditure of budgeted funds (5%).
- Ensures prompt evaluation of rehabilitation patients in order to determine potential rehabilitation needs. Participates in team evaluation and re-evaluation conferences (10%).
- Assures quality improvement, appropriate utilization review and compliance with applicable regulations and requirements of accreditation agencies (10%).
- Monitors treatment programs to ensure that rehabilitation program regimen is being maintained. Reviews medical charts to ensure documentation of treatment data. May confer with physicians and team members to coordinate programs (10%).
- Selects and assigns staff. Makes decisions on retention, promotion, demotion, and other personnel actions. May arrange for internships for student therapists (5%).

As reflected in the petitioner's organizational chart, the rehabilitation coordinator reports directly to the facility's administrator, as do the directors of nursing, staff development, social services, activities, and medical records, as well as the dietary and physical plant supervisors. The petitioner asserted that the proffered position required at least a bachelor's degree in a specialty field, like physical therapy. The beneficiary earned a bachelor of science degree in physical therapy from Fatima College of Physical Therapy in the Philippines on April 27, 2000. After that, according to the petitioner, he was employed as a clinical supervisor in the Philippines.

Despite the petitioner's designation of the position as a rehabilitation coordinator, the director found that the duties of the job were akin to those of a head nurse or nurse administrator, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. As indicated in the *Handbook*, a bachelor's degree is not a normal, minimum, and industry-wide requirement for entry into the nursing occupation, which is one criterion to qualify as a specialty occupation. Nor, in the director's judgement,

did the proffered position meet any of the other regulatory criteria of a specialty occupation. The director concluded, therefore, that the position at issue in this case is not a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F.Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

Counsel argues that the director erred in using the *Handbook* entry on registered nurses to categorize the proffered position as a head nurse or nurse administrator. Evidence in the record, counsel asserts, documents the bona fides of the position as a rehabilitation coordinator and the requirement of a baccalaureate degree to perform the services of the position. The AAO agrees with counsel that the proffered position is not that of a head nurse or nurse administrator, as described in the *Handbook*. Based on the duties outlined by the petitioner, the AAO finds that the position fits the *Handbook's* description of a health services manager – in particular, a clinical department head. As explained in the *Handbook*, 2004-05 edition, at 55-56:

The occupation, medical and health services manager, encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. *Specialists are in charge of specific clinical departments or services*, while generalists manage or help to manage an entire facility or system . . . .

*Clinical managers* have more specific responsibilities than do generalists, and *have training or experience in a specific clinical area*. For example, *directors of physical therapy are experienced physical therapists*, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers . . . .

(Emphases added). The duties of the petitioner's rehabilitation coordinator, previously outlined, accord closely with the above-described duties of a clinical manager, under the broader category of health services manager. The *Handbook* goes on to explain that while a master's, or sometimes a bachelor's, degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is required for most generalist positions in the field, "[f]or clinical department heads, a degree in the appropriate field and work experience may be sufficient for entry" into the occupation. *Handbook* at 56 (emphasis added). Based on the *Handbook's* description of the occupation the AAO concludes that a degree in a specific clinical area, in this case physical therapy, is the normal industry-wide requirement for entry into a position as clinical manager, or clinical

department head, for rehabilitation services at a healthcare facility. Accordingly, a clinical manager or clinical department head qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

For the reasons discussed above, the director's decision denying the petition on the ground that the proffered position is not a specialty occupation must be withdrawn. Before the petition can be approved, however, it must be established that the beneficiary is qualified to perform the services of the specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). In this connection, the AAO notes that there is no credentials evaluation report in the record confirming that the beneficiary's bachelor of science degree from Fatima College of Physical Therapy in the Philippines is equivalent to a U.S. baccalaureate degree in physical therapy from an accredited college or university. Furthermore, section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), provides that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure if the state requires a license to practice in the occupation. *See* also 8 C.F.R. § 214.2(h)(4)(v). California, like every other state, requires physical therapists to be licensed. The *Handbook* describes clinical managers as having training or experience in a specific clinical area, which the AAO understands to mean that a clinical manager must be licensed to practice a specific clinical specialty, like the beneficiary's specialty of physical therapy. Thus, the beneficiary must be a licensed physical therapist in the State of California to be qualified to perform the services of the proffered position.

The petition will be remanded for the director to determine whether the beneficiary is qualified to perform the services of the specialty occupation – in particular, whether the beneficiary's foreign degree is equivalent to a U.S. degree in the specialty and whether the beneficiary is properly licensed. The director must afford the petitioner reasonable time to provide evidence pertinent to those issues, as well as any other evidence the director may deem necessary. The director shall then issue a new decision based on the evidence of record relating to the requirements for eligibility. As always, the burden of proof rests with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision of September 20, 2003 is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.