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U.S. Citizenship  
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Services

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FILE: LIN 04 017 52365 Office: NEBRASKA SERVICE CENTER Date: JUN 13 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 sustained. The petition will be approved.

The petitioner is a health care company that seeks to employ the beneficiary as a rehab 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 on the basis that the petitioner had not established the proposed position as a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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

The petitioner is seeking the beneficiary's services as a rehab coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the documents accompanying the Form I-129; the petitioner's letter of support; the RFE response; the Form I-290B; and the documents accompanying the Form I-290B. The petitioner's letter of support set forth the following description of the duties of the proposed position:

The Rehab Director position at Neocare Home Care will be responsible for directing the activities of the rehabilitation division, including planning and evaluating professional health services within the agency and ensuring that services are provided at quality levels consistent with professional standards and goals. This position will include working with the Quality Assurance Administrators to set, review, and oversee the implementation of quality standards and procedures, as well as administrating [sic] on-going staff training.

The position will also be responsible for researching the latest health care philosophies and techniques, and ensuring that the staff is meeting and exceeding quality standards. This will involve reviewing and studying existing quality assurance standards, policies[,] and procedures; evaluating [the] effectiveness of quality assurance programs; overseeing personnel engaged in quality assurance activities; analyzing compiled data and writing reports summarizing quality assurance findings and making recommendations to the management for improvement of quality assurance programs. This will also involve working with the training staff to develop and oversee the development of training seminars and clinics, developing training materials, outsourcing advanced training seminars, and reviewing and selecting training services to compliment in-house training materials and services.

The petitioner then broke down the percentage of time that the beneficiary will spend performing various tasks as follows:

15% Researching new philosophies, techniques[,] and equipment in the field of Rehabilitative Medicine

- 20% Working with the Quality Assurance staff to develop and administer [sic] quality assurance standards and programs
- 20% Working with the training staff to develop and administer [sic] on-going staff training
- 15% Developing and reviewing reports on the quality/quantity of services delivered
- 15% Interviewing and recruiting health service professionals
- 15% Reviewing the work of health service professionals within the organization

The director denied the petition, stating:

The Service is not persuaded that the proffered position entails such complex duties that would require one to possess a bachelor's degree in a specific specialty. It appears that the primary function of the position is to ensure the quality of the services offered by the petitioner. The petitioner has indicated that . . . [the] position requires an individual with a minimum of a bachelor's degree in a rehabilitative field, such as physical therapy, occupational therapy, or speech-language therapy. The petitioner has also specifically stated that a bachelor's or master's degree in healthcare, physical therapy, or a related field is required for the proffered position. The petitioner's statements indicate there are multiple degree fields that may qualify one for the proffered position. Consequently, it does not appear that a bachelor's degree in a specific specialty is the minimum requirement for entry into the proffered position.

On appeal, counsel contends that the director erred in denying the petition. Counsel asserts "the requisite education for certain specialty occupations may be satisfied with a baccalaureate level education or equivalent experience from any one of several fields related to the proffered position." Counsel maintains that the proposed position qualifies for classification as 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.

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.

In determining whether a position qualifies as a specialty occupation, Citizenship and Immigration Services (CIS) looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds them to be closely aligned to the responsibilities of medical and health services managers. As discussed in the 2004-2005 edition of the *Handbook*:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. 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.

The structure and financing of healthcare is changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care. They will be called upon to improve efficiency in healthcare facilities and the quality of the healthcare provided. Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of interrelated services—for example, those ranging from inpatient care to outpatient followup care.

Large facilities usually have several assistant administrators to aid the top administrator and to handle daily decisions. Assistant administrators may direct activities in clinical areas such as nursing, surgery, therapy, medical records, or health information. (Managers in nonhealth areas, such as administrative services, computer and information systems, finance, and human resources, are not included in this statement. For information about them, see the statements on management occupations elsewhere in the *Handbook*.)

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finance, facility operations, and admissions, and have a larger role in resident care.

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.

In that the proposed position appears closely aligned to that of a medical and health services manager, the AAO next turns to the *Handbook's* discussion of whether the occupation normally requires a baccalaureate or higher degree, or its equivalent, for entry into the profession. The *Handbook* reports the following educational requirements for those seeking employment as medical and health services managers:

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.

For clinical department heads, a degree in the appropriate field and work experience may be sufficient for entry. However, a master's degree in health services administration or a related field may be required to advance. For example, nursing service administrators usually are chosen from among supervisory registered nurses with administrative abilities and a graduate degree in nursing or health services administration.

The petitioner is a provider of home health care services with 40 employees. Its staff is comprised of registered nurses, physical therapists, occupational therapists, speech language pathologists, medical social workers, and administrative staff. In that the petitioner's services are focused mainly on rehabilitation, the AAO finds that the educational requirements for the position would be similar to those of a clinical department head.

As such, the position satisfies the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position. The AAO therefore agrees with the petitioner's contention that the proposed position qualifies for classification as a specialty occupation.

The AAO next turns to the issue of whether the beneficiary is qualified to perform services in a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), in order 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 is seeking the beneficiary's services as a rehab coordinator. As proof of the beneficiary's qualifications for the proposed position, the record contains the following: (1) a copy of the beneficiary's bachelor's degree in physiotherapy<sup>1</sup>, issued by the [REDACTED] in 1997; (2) a copy of the transcript from that course of study; (3) a copy of the beneficiary's rotary internship certificate, issued by the [REDACTED] in India, in 2001 (the internship ended in 1998); (4) a copy of the beneficiary's "Certificate in Computing," issued by Indira Gandhi National Open University, in India, in 2000; (5) a copy of the transcript from that course of study; (6) a copy of the beneficiary's provisional certificate, which indicates that he earned a master's degree in physiotherapy from the [REDACTED] in India, in 2002; (7) a copy of the transcript from that course of study; (8) a copy of the beneficiary's post-graduate diploma in hospital management, issued by Annamalai University, in India, in 2002; (9) a copy of the transcript from that course of study; (10) a copy of the beneficiary's membership certificate in the Indian Association of Physiotherapists; (11) evidence that the beneficiary possesses New York State licensure in physical therapy; and (12) letters from previous employers attesting to his work experience.

The AAO notes that the beneficiary has been an assistant professor of physiotherapy since 2002. Prior to that time, he was a university lecturer and clinical physiotherapist.

The beneficiary earned his degrees abroad, so he is unqualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

The second criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C) requires a demonstration that the beneficiary holds 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.

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 under this second criterion 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;

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<sup>1</sup> Physiotherapy is known as "physical therapy" in the United States. See Learn This, Where You Go To Know, *Physical Therapy*, [http://encyclopedia.learnthis.info/p/ph/physical\\_therapy\\_1.html](http://encyclopedia.learnthis.info/p/ph/physical_therapy_1.html) (accessed May 11, 2005).

- (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;
- (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.

The record contains an evaluation of education issued by Morningside Evaluations, dated July 25, 2003. Morningside Evaluations has determined that the beneficiary's foreign degrees are equivalent to both a master's degree in physiotherapy and a bachelor's degree in health management from an accredited institution of higher education in the United States.

Therefore, the beneficiary's foreign education satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), so he therefore satisfies the second criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C) as well. As such, the beneficiary is qualified to perform the duties of the specialty occupation.

The petitioner has established both that the position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. As such, the petition will be approved.

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 sustained that burden.

**ORDER:** The appeal is sustained. The petition is approved.