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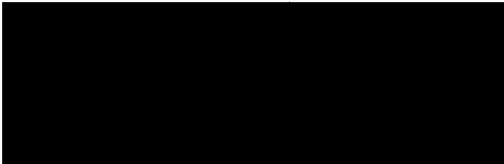
FILE: EAC 02 147 53368 Office: VERMONT SERVICE CENTER Date:

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

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 is a skilled nursing facility that seeks to employ the beneficiary as a recruitment and staffing 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. 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 recruitment and staffing coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's undated letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: checking staffing for the day and replacing any licensed employee that is not present and revising the day's schedule, as needed; running daily statistics to match patients with staff; entering attendance control data; checking the following day's schedule for any changes; projecting staffing requirements and preparing the weekly and monthly preliminary schedules; improving the staffing and scheduling system to meet changing conditions; confirming that all nurses working at the facility are currently licensed and appropriately skilled; contacting nurse staffing agencies to ensure that persons that the agency provides have the skill, experience and licenses to meet the nursing needs of the facility; researching the prevailing wage and comparing it with the wage offered by the petitioner; communicating with law firms preparing Form I-129 petitions for the petitioner; analyzing credentials for compliance with regulations and the petitioner's standards; reviewing Form I-129 petitions for accuracy; preparing responses to requests for evidence regarding credentials equivalencies, position descriptions or accumulated data from the staffing records. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is not a general human resources position as described in the *Handbook*, but is more correctly described in the entry for Employment, Recruitment, and Placement Specialists in DOL's *O*Net*. Counsel also states that while the proffered position is new, the duties were previously performed by the Director of Nursing, who had both a bachelor's and a master's degree. Counsel asserts that hiring an individual without a bachelor's degree for the proffered position would expose the petitioner to legal liability. Finally, counsel states that the industry standard is to hire individuals with bachelor's degrees as nurse recruiters.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; 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. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* entry for Human Resources, Training, and Labor Relations Managers and Specialists includes information for recruiters. The AAO does not concur with counsel that the *O*Net* description is a more accurate source of information regarding the proffered position than the *Handbook*. The two descriptions are very similar. A review of the Human Resources, Training, and Labor Relations Managers and Specialists job description in the *Handbook* confirms the accuracy of the director's assessment that no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, *in a specific specialty* is required for the proffered position.

Counsel's reference to the relevance of information from *O*Net* is not persuasive. *O*Net's* Job Zone category does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. A Job Zone category is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, nor specify the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted nine Internet job postings for nurse recruiters, two postings for staffing analysts or coordinators, a staff bio page for a Johns Hopkins-affiliated organization that included three nurse recruiters, and one posting for a nurse scheduling coordinator. The experience required for the nine nurse recruiters indicates: one required a bachelor's degree in nursing; two required the individuals to be registered nurses; five required bachelor's degrees, but specified no particular area of study; and one required a bachelor's degree in business or human resources. For the staffing analyst/coordinator positions, one required a bachelor's degree in human resources and one required a bachelor's degree in nursing, computer science or business. The background of the three nurse recruiters varied: one had no educational information; one was a registered nurse; and one was a registered nurse with a bachelor's degree in nursing. The information submitted clearly shows that there is no industry-wide standard of a bachelor's degree in a medical field in order to become a nurse recruiter.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that the person who previously performed the duties of the proffered position was the Director of Nursing. In response to the director's request for evidence, the petitioner provided the position description for that position. One of the 30 listed duties of the position was to interview, hire, orient, counsel, evaluate and discipline nursing staff. The educational requirement for that position was a bachelor's degree in nursing; the incumbent held a master's degree, as well. On appeal, counsel states that this indicates that the proffered position requires that an individual possess a bachelor's degree. The Director of Nursing position has many more responsibilities, most of which are clearly healthcare-related, than the proffered position of a nurse recruiter. Stating that a degree is required to perform the duties of the proffered position because the person who was previously responsible for similar duties as a small part of her job had a degree does not establish the necessity of a degree in that specialty.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

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.