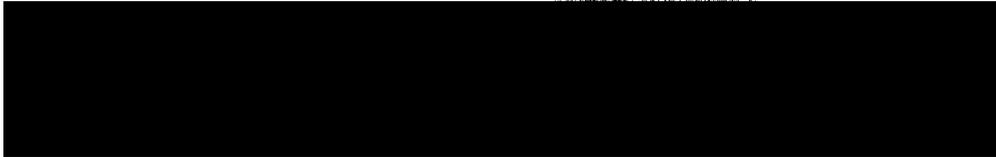




U.S. Citizenship
and Immigration
Services

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Dr

FILE: EAC 03 048 54588 Office: VERMONT SERVICE CENTER Date: NOV 15 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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 health and rehabilitation center that seeks to employ the beneficiary as a quality assurance 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 proposed position is not a specialty occupation, and the beneficiary is not qualified for a specialty occupation. On appeal, counsel states that the proposed position qualifies as a specialty occupation.

The AAO will first consider the director's conclusion that the proposed position is not 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.

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 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 quality assurance coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail interpreting and implementing quality assurance standards to ensure patients receive quality care; studying healthcare guidelines and policies and reviewing healthcare procedures; writing quality assurance policies and procedures; performing assessments of residents; identifying expected outcomes for each resident and developing and planning care that prescribes interventions to attain the expected outcomes; compiling statistical data and writing narrative reports summarizing quality assurance findings; reviewing patient records, applying utilization review criteria to determine the need for admission and stay in the healthcare center; overseeing, monitoring, and documenting residents' status concerning physical, behavioral, and activities of daily living; participating in interdisciplinary team conferences and providing education to residents and their families. For the proposed position the petitioner requires a baccalaureate degree in nursing.

The director denied the petition, finding that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) does not indicate that the proposed position would require a baccalaureate degree or its equivalent in a major related to quality assurance. The director also found that the beneficiary is unqualified for a specialty occupation since the beneficiary's baccalaureate degree in nursing is unrelated to quality assurance. According to the director, nursing does not necessarily qualify as a specialty occupation under the Act.

On appeal, counsel states that the petitioner's director of human resources holds a bachelor's degree and has been performing the proposed duties. According to counsel, the proposed duties of this newly created position are distinguishable from a regular staff nurse as they are unique and complex, requiring a baccalaureate degree or its equivalent in nursing. The petitioner seeks to maximize efficiency and profitability while maintaining quality care, counsel asserts. Referring to Professor M. Frances Keen's evaluation of the proposed position, counsel states that it reveals that the proposed position requires a baccalaureate degree in nursing. Counsel asserts that the beneficiary qualifies to perform the proposed position as reflected in the submitted educational evaluation. Counsel discusses *Unico American Corp. v. Watson*, 1991 WL 11002594 (C.D. Cal. Mar 19, 1991), an unpublished case that indicates that CIS should give deference to an employer's view and should not rely simply on standardized classification systems; and *Matter of Essex Cryogenic Industries, Inc.*, 14 I&N Dec. 196 (BIA 1972).

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 first considers 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)).

In determining whether a position qualifies as a specialty occupation, 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 *Handbook* for its information about the duties and educational requirements of occupations.

The proposed duties are similar to those of a registered nurse (RN), as the *Handbook* conveys:

Some nurses move into the business side of health care. Their nursing expertise and experience on a healthcare team equip them with the ability to manage ambulatory, acute, home health, and chronic care services. Employers—including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others—need RNs for health planning and development, marketing, consulting, policy development, and quality assurance. Other nurses work as college and university faculty or conduct research.

The proposed duties involve policy development, quality assurance, and health planning and development; and the *Handbook* indicates that RNs are needed in these areas. The beneficiary will also develop and plan care to achieve specific outcomes for residents and provide education to residents and their family. These duties are similar to the *Handbook's* description of an RN that develops and manages nursing care plans; instructs patients and their families in proper care; and helps individuals and groups take steps to improve or maintain their health.

For the educational requirements of nurses, the *Handbook* relays:

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (ADN), and a diploma.

The *Handbook* explains that all states and the District of Columbia require graduation from an approved nursing program and pass a national licensing examination in order to obtain a nursing license.

Based on the *Handbook's* information, an employer does not require an RN to possess a baccalaureate degree in nursing. As such, the petitioner fails to demonstrate that the proposed position qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is not the normal minimum requirement for entry into the particular position.

It is important to note that on appeal counsel cites to *Unico American Corp.*, an unpublished case, to state that CIS should give deference to an employer's view and should not rely simply on standardized classification systems. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that the degree requirement is common to the industry in parallel positions among similar organizations - the petitioner references a letter from Professor Keen, an associate professor and assistant dean with the Villanova University's College of Nursing, and a consultant with Josef Silny & Associates, Inc. Professor Keen's letter stated that based on his academic experience, a person with at least a bachelor's degree in nursing would typically hold the position of quality assurance coordinator. Although Professor Keen has extensive academic experience, the AAO nonetheless finds that no independent evidence in the record supports his statement. There is no evidence in the record from the industry's professional association stating that it has made a degree a minimum entry requirement; nor are there letters or affidavits from firms or individuals in the industry attesting that such firms "routinely employ and recruit only degreed individuals." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this reason, the evidence in the record is insufficient to establish a degree requirement that is common to the industry in parallel positions among similar organizations.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner establish that the particular position is so complex or unique that it can be performed only by a person with a degree. As conveyed earlier, the proposed position is analogous to an RN, which is an occupation that requires licensure but does not require a baccalaureate degree or its equivalent in nursing. No evidence in the record reflects that the proposed position would have such complexity or uniqueness as to require a baccalaureate degree in nursing. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Since this is a newly created position, the petitioner cannot establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that it normally requires a degree or its equivalent for the proposed position.

To satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Although counsel asserts that the petitioner's director of human resources holds a bachelor's degree and has been performing the proposed duties, this is insufficient to establish that the proposed position has such specialization and complexity as to require a baccalaureate degree in nursing. The *Handbook* reveals that the proposed position parallels an RN, and that an RN does not require a baccalaureate degree in nursing. Furthermore, no evidence in the record reflects the degree held by the director of human resources, and no evidence shows that the proposed position is the same as the position performed by the director of human resources. For these reasons, the petitioner fails to establish this last criterion at 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.

In light of the conclusion that the proposed position fails to qualify as a specialty occupation, the AAO will not address whether the beneficiary is qualified to perform the proposed position.

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.