



U.S. Citizenship
and Immigration
Services

identifying data [redacted]
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



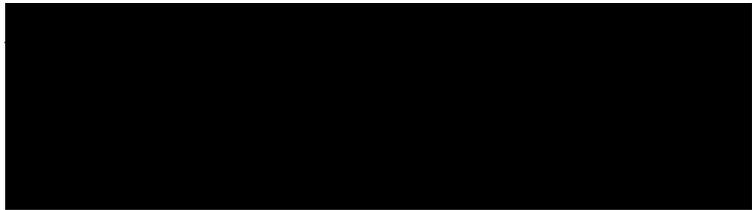
D2

FILE: WAC 04 055 50198 Office: CALIFORNIA SERVICE CENTER Date: OCT 03 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 convalescent home that seeks to employ the beneficiary as an assistant director of nursing. 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. On appeal, counsel states that the proposed position qualifies 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.

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 request for evidence; (3) the response to the request for evidence; (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 an assistant director of nursing. Evidence of the beneficiary's duties includes: the Form I-129; the statement from the petitioner's vice-president; the letter accompanying the Form I-129; and the evidence submitted in response to the request for additional evidence. According to the statement of the petitioner's vice-president, the beneficiary will, in conjunction with the director of nursing, perform duties that entail managing and directing nursing services. The vice-president stated that the beneficiary will ensure that the nursing staff is organized, directed, and staffed to ensure quality care; schedule nursing staff, ensuring a sufficient number of them provide patient care; propose and direct changes in the staffing and scheduling system; participate in hiring nursing staff; direct and manage nursing activities; have 24 hour responsibility for nursing care; and observe and evaluate the clinical performance of nursing staff and provide counseling and training to them. According to the vice-president, the beneficiary will develop and implement policies, procedures, and standards of care that nursing staff will follow when caring for residents; and keep abreast of and ensure compliance with state and federal rules and regulations relating to nursing care. The petitioner's December 11, 2003 letter stated that the beneficiary will, in part, develop the policies and procedures that describe the operations of nursing services; and provide budget and long-range strategic planning, and management of the selection, supervision, basic preparation, and continuing education and evaluation of the nursing staff. The petitioner stated that the proposed position requires a baccalaureate degree in nursing (B.S.N.).

The director denied the petition, finding that the proposed duties are an amalgam of those of a registered nurse (RN) and a medical health services manager as those occupations are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* indicates that a registered nurse (RN) does not require a baccalaureate degree in nursing, and a medical health services manager does not require a baccalaureate degree in a specialized field. The director stated that the petitioner is a convalescent home with 150 employees, and an advanced degree may or may not be required; and that the complexity of the proposed duties do not relate to those found in large facilities where a master's degree is preferred. The director determined that the beneficiary does not have recognition of expertise through progressively responsible experience in management. The director found the submitted organizational chart and job postings unpersuasive in establishing the proposed position as a specialty occupation. The director stated that although the petitioner claims to normally require a bachelor's degree for the proposed position, no independent evidence corroborates this; and the director discussed the evidentiary standard in *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The director also discussed the decision in *Matter of Caron Int'l, Inc.* 19 I&N 791 (Comm. 1988), a case which involves managerial positions. The director determined that the proposed duties and stated level of responsibility did not indicate complexity or authority that is beyond what is normally encountered in the occupational field; and that the evidence did not show that the job offered could not be performed by an experienced person whose educational training falls short of a bachelor's degree as the record reflected that 70 percent of the duties are administrative and managerial.

On appeal, counsel describes the proposed duties, and states that the petitioner requires a B.S.N. for the proposed position as it is complex and requires specialized knowledge.

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)).

To establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position, counsel's March 5, 2004 letter stated that the *Handbook* reports that management-level nursing positions increasingly require a graduate degree in nursing or health services administration, which counsel asserts signifies that management-level nursing positions require at least an undergraduate baccalaureate degree. In the December 16, 2003 letter, counsel refers to the *Handbook's* classification of RNs to show that a B.S.N. is frequently required as a minimum entry requirement for nursing personnel holding supervisory positions; and counsel refers to the California Code of Regulations to establish that "California state law requires a B.S.N. for positions in other types of health care facilities comparable to the position to be filled by [the beneficiary]."

Counsel's assertions about the California regulatory code and information in *Handbook* are not persuasive in establishing that the proposed position is a specialty occupation. The regulatory code¹ contained in the record states that nursing service shall be:

[U]nder the direction of an administrator of nursing services who shall be a registered nurse with the following qualifications:

- (1) Master's degree in nursing or a related field with at least one year of experience in administration; or
- (2) Baccalaureate degree in nursing or a related field with at least two years of experience in nursing administration; or
- (3) At least four years of experience in nursing administration or supervision, with evidence of continuing education directly related to the job specifications.

The petitioner's requirement for the proposed position differs from the administrator of nursing services described in the California Code of Regulations in that the administrator of nursing services is required to be

¹ California Code of Regulations, Title 22, Division 5, Chapter 1, Article 3, Section 22:70211(b), relates to the general requirements of nursing services at a general acute care hospital.

"a registered nurse." Thus, because the petitioner does not require RN licensure, the proposed position differs from the administrative nursing position that is described in the California Code of Regulations.

With respect to nursing service administrators, the *Handbook* states:

[N]ursing service administrators usually are chosen from among supervisory registered nurses with administrative abilities and a graduate degree in nursing or health services administration.

Again, because the petitioner does not require the services of an RN, and requires only a BSN, the proposed position is not that of a nursing service administrator as the *Handbook* describes a nursing service administrator as being chosen from among RNs possessing a graduate degree in nursing or health services administration.

The proposed duties can be grouped within the areas of policy development, quality assurance, and health planning and development, which are areas that the *Handbook* conveys that employers need nurses for. The *Handbook* states:

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.

With respect to the educational requirements of nurses, the *Handbook* conveys that three major paths lead to registered nursing: "a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (ADN), and a diploma." The *Handbook* relays that all states and the District of Columbia require that students graduate from an approved nursing program and pass a national licensing examination in order to obtain a nursing license.

In light of the *Handbook's* information, which is that RNs develop policies and provide quality assurance and health planning and development, and that nurses do not require a B.S.N., the petitioner fails to demonstrate that a baccalaureate or higher degree or its equivalent is not the normal minimum requirement for entry into the particular position. Accordingly, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The five job postings fail 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 - as the employers in the job postings require RN licensure. Thus, the positions in the postings are not parallel to the proposed position.

The statement of the director of nursing with Royale Convalescent Center is also submitted to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The director states that its facility requires a B.S.N. for an assistant director of nursing services, and that this is the standard minimum educational requirement in southern California. A single employer's requirement of a B.S.N. is insufficient to demonstrate an industry-wide requirement of a B.S.N., however. Moreover, no independent evidence substantiates the director's statement that a B.S.N. is the standard minimum educational requirement in southern California. 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)).

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 discussed earlier in this decision, the *Handbook* reveals that the proposed duties are performed by RNs, which is an occupation that does not require a B.S.N. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner asserts that it establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) because it normally requires a degree or its equivalent for its supervisory nursing staff. No independent evidence in the record substantiates this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, citing *Matter of Treasure Craft of California*.

To establish 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. In this decision the AAO has already conveyed that the proposed duties are performed by RNs, and that this occupation does not require a B.S.N. No evidence shows the proposed duties as so specialized and complex as to require knowledge that is usually associated with the attainment of a B.S.N. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.