



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



D2

FILE: WAC 02 082 53868 Office: CALIFORNIA SERVICE CENTER Date: OCT 21 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 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 staffing registry of custodial care and private duty nurses. It seeks to hire the beneficiary as a quality assurance coordinator. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

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

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a quality assurance coordinator. Evidence of the beneficiary’s duties includes: the Form I-129; a January 2, 2002 letter from the petitioner; and counsel’s June 24, 2002 response to the director’s request for evidence.

At the time of filing, the petitioner stated that the beneficiary would be assigned to different medical facilities within the Bay Area and would be responsible for interpreting and implementing quality assurance standards in a medical facility (and/or HMO) to ensure quality care for patients; reviewing quality assurance standards, study existing facility (and/or HMO) policies and procedures; interviewing medical facilities’ personnel and patients to evaluate effectiveness of the health care workers performance; reviewing and evaluating patients’ medical records and applying quality assurance criteria; selecting specific topics for review, such as problem procedures, drugs, high volume cases, high-risk cases and other factors; compiling statistical data and write narrative reports summarizing quality assurance findings; reviewing patient records, applying utilization review criteria, personnel engaged in quality assurance review of medical records. The petitioner indicated that the position requires a strong background in medical/health services.

The director issued a request for evidence including a detailed description of the work done, specific job duties and the percentage of time to be spent on each duty. The director requested evidence that the proffered position meets one of the above listed criteria. The director requested a foreign education credentials evaluation. The director noted that the petitioner is a staffing agency and that the petitioner indicated that the beneficiary would be working in various locations. The director requested copies of contracts between the petitioner and the clients where the beneficiary would perform services as well as a complete itinerary of services or engagements where the beneficiary will perform services. The director also requested a certified labor condition application.

Counsel responded to the director’s request for evidence and noted that it is difficult to estimate the exact percentage of time to be spent on tasks but in general the beneficiary would spend 25% of his time establishing quality assurance guidelines; 50% of his time reviewing patient records for quality assurance compliance; 15% of his time on research; and 10% of his time on administrative tasks and advising employees on new healthcare development. Counsel asserted that the position of quality assurance coordinator is a specialty occupation because of the technical nature of the job; it is standard in the industry to have a degree and the employer normally requires a degree from its quality assurance coordinators. Counsel contended that the proffered position is an in-house quality assurance coordinator and the beneficiary will be “responsible for interpreting and implementing quality assurance standards in the medical facility to ensure quality care to patients.” Counsel contended that the beneficiary would not provide services for the

petitioner's clients. Counsel asserted that the proffered position's duties are similar to those of a health services manager. Counsel reasoned that the basic job duties of a quality assurance coordinator overlap and exceed those of a hospital services manager, thus making it evident from the Department of Labor's own guidelines that a baccalaureate degree is required for the instant position. Counsel refers to the Department of Labor's *Dictionary of Occupational Titles (DOT)* SVP rating of 7 to support his contention that the proffered position is a specialty occupation.

In his denial, the director referred to the description of a health services manager in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and noted that neither the generalist or specialist found under the description is similar to the proffered position. Additionally, the director also reviewed the *DOT* in response to counsel's contention and stated that the SVP of 7, defined as over two years and up to four years of education, indicates that the requirement for a baccalaureate or higher degree is not common in the industry. The director noted that he requested an itinerary of services or engagements where the beneficiary would perform services and that in response counsel contended that the beneficiary will be employed as an in-house quality assurance coordinator and did not provide services for the petitioner's clients. The director found that it did not appear to be reasonable and credible that a staffing registry that does not provide patient care would require the services of an in-house quality assurance coordinator. The director found that the petitioner failed to provide all the evidence that was requested. The director found that the petitioner had not established that it would be acting as the employer pursuant to the regulation 8 C.F.R. § 214.2(h)(4)(ii). The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the proffered position is a specialty occupation as it satisfies all four listed criteria. Counsel asserts that the duties of the proffered position mirror exactly the duties of a health services manager as listed in the *Handbook*. Counsel contends that the *Handbook* indicates that a bachelor's degree in nursing is the minimum requirement for an entry-level position of the health services manager. Counsel asserts that a bachelor's degree is commonly required for the position of quality assurance coordinator. Finally, counsel asserts that the petitioner's need for an in-house coordinator is reasonable. Counsel contends that the beneficiary's duties include quality control over the petitioner's workforce and ensure that the employees receive proper training and that their services comply with state and federal regulations.

The AAO notes that the initial position description provided by the petitioner clearly stated that the beneficiary would be working at other facilities: "beneficiary would be assigned to different medical facilities within the Bay Area and would be responsible in interpreting and implementing quality assurance standards in a medical facility (and/or HMO) policies and procedures." In its support letter, the petitioner did not state that the beneficiary would be training the petitioner's private duty nurses who work in private homes. In response to the director's request for evidence and on appeal, counsel asserts that the beneficiary would be working only at the petitioner's location. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. §103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg.

Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Therefore, the AAO will review the position description initially submitted by the petitioner.

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 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*, 812 F. Supp. 872, 1095 (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.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. As discussed by the director, the duties of the proffered position do not describe the position of a health services manager. Medical and health services managers consist of both 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 petitioner failed to establish that the proffered position is a health services manager. The petitioner has not provided evidence of the services it provides to clients or evidence of clients or provided enough information about itself to establish that it is similar to the facilities described in the *Handbook* that would employ a health services manager.

Additionally, the *Handbook* indicates that 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. The *Handbook* indicates that nurses are not a specialty occupation.

Although the director requested copies of contracts between the petitioner and the clients where the beneficiary would perform services as well as a complete itinerary of services or engagements where the beneficiary will perform services, the petitioner did not provide them. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner indicated that it has over 400 employees and has a gross annual income of \$600,000. The petitioner has not provided evidence that it provides services for medical facilities as indicated in the description of the proffered position. The petitioner asserts that the beneficiary would review quality assurance standards, study existing facility (and/or HMO) policies and procedures. The petitioner does not document the duties in relation to its business. The petitioner has not provided evidence of the number of medical facilities or HMO's it provides services for. It is incumbent upon the petitioner to describe the duties of the proffered position in sufficient detail to permit an analysis of the position and to allow CIS to determine the nature and complexity of the duties to be performed. This, the petitioner failed to do. As such, it cannot be determined that: a baccalaureate or higher degree is normally the minimum requirement for entry into the position; the duties of the position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty; or the position's duties are so specialized and complex that knowledge required to perform them is usually associated with attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), and (4).

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits various internet postings for the position of quality assurance coordinator from various companies. One deficiency in the postings is that the companies are either obviously dissimilar to the petitioner or their nature is undisclosed. For example, Roth Staffing and First Option Financial Recruiting do not indicate the type of service or product provided; Brilliantpeople.com indicates that the advertised position is with a testing laboratory but does not indicate the name or size of the company; a large biomedical organization indicates that the advertised position manages a staff and indicates that it requires a bachelor's degree without indicating a specific specialty; a pharmaceutical/medical device testing laboratory and consulting firm requires five to ten years experience in the medical device/pharmaceutical related industry in addition to a bachelor's degree. The petitioner has not established that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor can the petitioner establish that the particular position is so complex or unique that it can be performed only by an individual with a degree.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

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.