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FILE: SRC 05 157 52298 Office: TEXAS SERVICE CENTER Date: **AUG 15 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 an assisted living facility that seeks to employ the beneficiary as a night shift health services manager. 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 night shift health services manager. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: coordinating, directing and overseeing the delivery of medicine and the provision of needed services for care, including bathing, feeding and dressing residents; responding to any medical emergencies and making decisions regarding the need for intervention or contacting physicians or services to transport residents to hospitals; supervising all staff members providing these services to residents and those providing other services for the maintenance and operation of the facility; planning, directing and coordinating medicine and health services; administering fiscal operations, including planning budgets, authorizing expenditures and coordinating financial reports; directing and coordinating the activities of medical, nursing, technical, clerical, service and maintenance personnel; and implementing and administering programs and services. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in nursing.

The director found that the proffered position was not a specialty occupation. 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 duties of the proffered position most resemble those of a medical and health services manager, which is a specialty occupation. Counsel states that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that a master's degree is a standard requirement for entry into the profession in large facilities and that a bachelor's degree may be adequate for smaller facilities, such as the petitioner's. Counsel asserts that the director mistakenly interpreted one sentence from the *Handbook*, which states that some physician's offices may substitute experience for a degree, as meaning that a degree is not the normal requirement for entry into the occupation.

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 duties of a position, rather than the title, are used to analyze whether a job is a specialty occupation. Titles of positions, by themselves, are not reliable indicators of whether positions are specialty occupations.

The AAO does not concur with counsel that the position falls under the description of a medical and health services manager. Many of the duties of the proffered position are similar to those of a nurse or head nurse. A review of the registered nurse job description in the *Handbook* indicates that a nurse may supervise nursing staff, establish work schedules and budgets, and maintain medical supply inventories. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a registered nurse job.

The petitioner did not submit any evidence regarding parallel positions in the petitioner's industry or any evidence from professional associations regarding an industry standard. Additionally, the petitioner did not provide documentation to support the complexity or uniqueness of the proffered position. Thus, the petitioner has 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. There is no evidence in the record regarding the petitioner's past hiring practices and the petitioner is not able to meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. The AAO notes that on the Form I-129, the petitioner stated that it had seven employees and gross annual income of \$750,000. In its response to the director's request for evidence, the petitioner stated that it had just expanded and had "licensing approval to house thirty-three (33) residents." There is no evidence in the record to support any of these claims. As a result, there is no evidence to establish the complexity of the proffered position, or that the duties of the position may require a four-year degree in a 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.