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FILE: WAC 04 227 50358 Office: CALIFORNIA SERVICE CENTER Date: **AUG 25 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 99-bed skilled nursing facility. It seeks to employ the beneficiary as a patient care coordinator. Accordingly, 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).

On October 29, 2004, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner submits a brief and re-submits the same documentation submitted with the Form I-129.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

When determining whether a particular job qualifies as a specialty occupation, CIS does not only 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 record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's October 29, 2004 denial letter; and (3) the Form I-290B and the petitioner's November 23, 2004 letter in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a patient care coordinator. According to the petitioner's June 8, 2004 letter appended to the Form I-129, the beneficiary's position as a patient care coordinator would include:

[A] systematic nursing work planning, [sic] review and coordination of pertinent services related to medical, nursing, therapy, and rehabilitative care; likewise the Patient Care [C]oordinator is tasked to coordinate the development of a comprehensive individual patient care plans [sic] to meet the specific needs of residents of the health care center. In addition, the Patient Care Coordinator will provide liaison work with other departments, disciplines, or offices within the organization in the development and delivery of patient care services.

The petitioner provided a copy of its job notice for the position with the above described duties and indicated that it needed "a degree holder preferably in the area of health care, health care management or related disciplines in medical-paramedical services." The petitioner provided copies of several job announcements and lists of job openings for the position of patient care coordinator, and one for patient care coordinator, emergency nursing care of children. The job announcements indicated the organizations seeking coordinators required an R.N (registered nurse) degree, a bachelor of science in nursing for the position of patient care coordinator, emergency nurse care of children, or a bachelor's degree in unspecified disciplines or in a medically related or public relations field.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director observed that the position of patient care coordinator most closely resembled the position of a registered nurse. The director further observed that the proffered position included characteristics beyond that of an entry-level registered nurse but was not analogous to an administrative nursing position. The director, relying on a Memorandum by Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, *Guidance on Adjudication*

of *H-1B Petitions Filed on Behalf of Nurses*, HQISD 70/6.2.8-P (November 27, 2002) (Williams' memorandum), acknowledged that there were an increasing number of nursing specialties that required a higher degree of knowledge and skill than a typical R.N. or staff nurse position. The director noted that the Williams' memorandum mentioned that a number of certification examinations were available to registered nurses who work in such nursing specialties but who are not advanced practice nurses. The director concluded, based on the record, that the petitioner had not provided evidence regarding parallel positions in the petitioner's industry or from professional associations regarding an industry standard or documentation to support the complexity or uniqueness of the proffered position or that the nature of the specific duties of the position is so specialized and complex that the position requires knowledge usually associated with the attainment of a baccalaureate or higher degree.

On appeal, the petitioner claims that the job sites consulted and provided in support of the petition indicated the necessity of a baccalaureate degree for the position of a patient care coordinator. The petitioner asserts that the proffered position straddles the requirements of fundamental knowledge of health care delivery and the administration of health care services. The petitioner contends that the position of patient care coordinator requires a specialized understanding of the "nursing profession" but also the broader framework of patient care and the technical dexterity to manage the delivery of patient care. The petitioner notes that while the beneficiary is a registered nurse she will be performing duties that require a specialized skill in patient care and the management of health care service and delivery, including management of care settings and overseeing of activities, duties associated with a position of medical and health services manager. The petitioner also references the previously submitted job announcements and its job notice as evidence that an applicant must be a degree holder, preferably in the area of health care, health care management, or related disciplines in the medical-paramedical services. The petitioner concludes by indicating that it requires a bachelor's degree, such a degree is a common requirement in the industry, and the nature of the duties are specialized and complex, requiring the services of an applicant that is degreed, trained, and experienced in relevant health care areas.

The petitioner's argument and evidence is not persuasive. The petitioner has not established that the proffered position fulfills any 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 whether the petitioner has established that the petitioner has fulfilled either of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) or (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 this matter, the AAO finds that the description of the duties of the proffered position corresponds to the duties of a registered nurse. The petitioner also recognizes that a patient care coordinator is a registered nurse position but asserts that a patient care coordinator includes some duties relevant to a position of medical and health services manager. The *Handbook* does not describe the specific proffered occupation of patient care coordinator. In this instance however, the petitioner requires that the incumbent conduct patient care, participate in the discussion relative to the assessment of patient's needs and problems, meet with nurses and support staff and maintain minutes of the meetings, document patient care plans, conduct utilization review for patients, compile data from medical records to assess patients' requirements and level of care, make rounds with medical staff, identify and recommend solutions to problems relevant to patient care services, write up reports, coordinate and/or make patient care visits, coordinate admissions and assessment, coordinate and/or conduct initial assessment of patient, and coordinate the teaching of patient/caregiver techniques, activities associated with a registered nurse position.

The AAO acknowledges that the petitioner is a 99-bed skilled nursing facility and that the *Handbook* reports: "[i]n smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finances, facility operations, and admissions and also have a larger role in resident care." Upon review of the petitioner's description of the proffered position's duties, the duties are not sufficiently defined to determine that the petitioner's successful incumbent will manage personnel, finances, facility operations, but rather will primarily be involved in patient care including duties, such as assembling patients' health information and communicating with other health care professionals to clarify diagnoses or to obtain additional information, duties that correspond to the duties of a health information technician, not a health services manager. The *Handbook* reports that a registered nurse may obtain an associate degree or diploma to enter into the nursing field and that a health information technician also may obtain an associate degree to enter into the field. The *Handbook* does not indicate that either a registered nurse or a health information technician are required to attain a bachelor's degree or higher degree or its equivalent as the normal minimum requirement for entry into the particular position. The petitioner has not provided sufficient evidence to establish that the position satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner has not presented evidence that any professional association within its industry has made a degree a minimum entry requirement into a patient care coordinator position. 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)). Neither has the petitioner presented letters or affidavits from firms or individuals in the industry attesting that such firms "routinely employ and recruit only degreed individuals."

The evidence before both the director and the AAO consists of the petitioner's letter in support of the petition and job announcements from other care facilities and websites advertising for a patient care coordinator position. Regarding the job announcements, the AAO observes that one job announcement indicates that a registered nurse degree is required, but that a bachelor of science in nursing is preferred. A second job announcement is for a patient care coordinator, emergency nursing care of children, a position that connotes a higher complexity of training because of the emergency nature of the position as well as the position's

involvement with children. This position requires that the successful candidate have a bachelor of science degree in nursing. Two announcements indicate that the advertised position requires a bachelor's degree in a medically-related or public relations field and two years of experience as a patient care coordinator. Finally, the petitioner submits a list of employers seeking patient care coordinators that indicates generally a bachelor's degree is the educational level sought; although the employers do not specify that the bachelor's degree be in a specific discipline. The record does not contain sufficient evidence to demonstrate that the organizations in the job announcements "routinely employ and recruit only degreed individuals."

In addition, the job announcements do not include detailed descriptions of the type or size of the listing organizations. The AAO notes that the organizations hiring for a patient care coordinator include two hospitals, a hospice facility, and a preventive medicine clinic. The hospice facility, the organization that most closely resembles the petitioner's facility, requires only that its patient care coordinator be a registered nurse and the job listing does not indicate the size of the facility or the number of its employees. As such, the record does not contain information that organizations similar to the petitioner "routinely employ and recruit only degreed individuals" for positions parallel to the petitioner's proffered position. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner does not claim and does not submit documentation demonstrating that the proffered position is either so unique or complex that it would require an individual with a degree in a specific specialty. The evidence of record fails to establish that the proffered position is a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that it normally requires a degree or its equivalent for the position. The petitioner's desire to employ an individual with a bachelor's degree in the area of health care, health care management, or related disciplines in medical-paramedical services does not establish that the position is a specialty occupation. 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 at 384. The critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. *See id.* at 388. In addition, the petitioner does not specify that the successful candidate for this position will have a degree in a particular discipline; thus the petitioner fails to convey that the position warrants an individual trained and degreed in a specific discipline. Neither does the petitioner provide evidence that it has only hired individuals with a bachelor's degree or higher in a specific discipline when filling the position of patient care coordinator in the past. The petitioner has failed to persuade that it has satisfied the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The evidence in the record is also inadequate to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Again, the AAO observes that the petitioner and other organizations indicate that the employee in the position of patient care coordinator may have training and education in a variety of disciplines. Soliciting an individual with a broadly-based education undermines the petitioner's contention that the nature of a patient care coordinator's duties is specialized and complex. 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 is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a registered nurse or technician nor, according to the *Handbook*, is the knowledge required to perform the duties of a registered nurse or health services technician usually associated with the attainment of a bachelor's or higher degree in nursing. Upon review of the totality of the record, the petitioner has not established that this position fulfills the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.