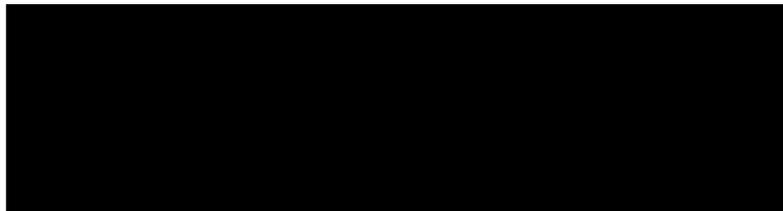


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U.S. Citizenship
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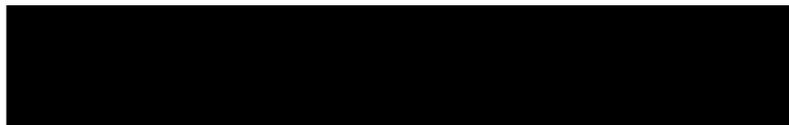
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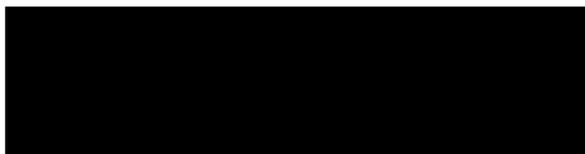
FILE: SRC 04 226 50187 Office: TEXAS SERVICE CENTER Date: **JUN 26 2006**

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 materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a provider of health care services to home-bound patients. It seeks to employ the beneficiary as a rehabilitation coordinator and to classify her 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 on the ground that the record failed to establish that the proffered 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.

As provided in 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 service center's requests for evidence (RFEs); (3) the petitioner's responses to the RFEs; (4) the notice of decision, and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as a provider of home health care services to home-bound patients as well as qualified staff to other entities. The petitioner stated that it was established in 1998, has a gross annual income of \$2.5 million and a net annual income of \$600,000, and has 150 employees in the Houston metropolitan area, most of whom are licensed health care professionals. Due to its steadily increasing patient load the petitioner indicated that it needed to hire three coordinators of rehabilitation services, each of whom would be responsible for at least 100 patients in distinct geographical areas. The petitioner proposes to employ the beneficiary and its other two rehabilitation coordinators for three years each at annual salaries of \$44,500. The duties of the proffered position were described as follows:

The Coordinators of Rehabilitation Services will be responsible for planning, administering and directing the operations of the health rehabilitation programs, such as physical, occupational and speech therapies; consulting with medical and professional staff of other departments and other health care professionals to plan and coordinate joint patient and management objectives; conducting staff conferences; planning training programs to maintain proficiency of professional staff in therapy techniques and use of newer methods and/or equipment to meet patients' needs. He or she will also allocate personnel based on workload, space, and equipment. He or she will be in charge of his or her department and thus analyze operating costs and budgets. Lastly, he or she may coordinate research projects to develop new approaches to rehabilitation medicine.

The beneficiary is qualified to perform the services of the proffered position, the petitioner declared, by virtue of her bachelor of science in physical therapy from Our Lady of Fatima College, Fatima Medical Science Foundation, Inc., in Valenzuela City, the Philippines, awarded on April 22, 2001, as well as her subsequent work experience as a college instructor of geriatric care givers and as a cooperative health plan liaison officer for a medical organization, which involved the management of rehabilitation services. According to a credentials evaluation report from SpanTran Services, a member of the National Association of Credential Evaluation Services, the beneficiary's educational degree is equivalent to a bachelor of science in physical therapy from an accredited U.S. college or university.

In response to the service center's first RFE counsel provided further information about the petitioner's services, which include skilled nursing, physical therapy, occupational therapy, speech therapy, and social work services. Counsel also cited six other petitions for rehabilitation coordinator positions that were approved by the Texas or Nebraska Service Centers. They include the two filed by the instant petitioner for its other two rehabilitation coordinators. In response to the service center's second RFE counsel stated that the proffered position does not require a license because the beneficiary is not being hired to practice physical therapy. The beneficiary will not be in direct contact with the petitioner's patients, counsel explained, but rather coordinating the services provided to the patients by physical therapists, occupational therapists, speech therapists, and social workers, as well as acting as a liaison between the respective specialists and the director of nursing. Counsel indicated that the petitioner employs a number of physical therapists and contracts for the services of others as needed.

In her decision the director found that the duties of the proffered position were akin to those of a top executive, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, and quoted language in the *Handbook* indicating that a bachelor's degree is not the normal minimum

requirement for entry into such a position. The petitioner did not establish that a bachelor's degree requirement is common to the industry in parallel positions among similar organizations, the director stated, or that the proffered position is so complex or unique that it can only be performed by an individual with a degree. The director concluded that the proffered position does not meet the regulatory definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(ii) and does not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the proffered position qualifies as a specialty occupation under the first two criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The minimum educational requirement for the position is a bachelor's degree in physical therapy, counsel explains, because the rehabilitation coordinator is responsible for consulting with medical personnel and other health care professionals in planning and coordinating the provision of physical and occupational therapy services to patients. The beneficiary, like the petitioner's other two rehabilitation coordinators, will be in charge of her own department and have her own personnel and budget. The specialty knowledge needed for the position, counsel contends, requires a bachelor's degree in physical therapy. Counsel reiterates that the service center has approved other petitions for rehabilitation coordinators and that the position does not require a license.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO does not agree with the director's finding that the proffered position fits within the *Handbook's* occupational category of top executives. Based on the petitioner's description of the rehabilitation coordinator's duties, the AAO determines that the position accords with the *Handbook's* description of medical and health services managers – in particular, a clinical department head. As explained in the *Handbook*, 2006-07 edition:

Medical and health services managers . . . plan, direct, coordinate, and supervise the delivery of health care. Medical and health services managers include 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.

....

Clinical managers have training or experience in a specific clinical area and, accordingly, have more specific responsibilities than do generalists. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

(Emphases added). With respect to the educational requirements of the occupation, the *Handbook, id.*, states as follows:

A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities, at the departmental level within health care organizations, and in health information management. Physicians' offices and some other facilities may substitute on-the-job experience for formal education.

....

For persons seeking to become heads of clinical departments, a degree in the appropriate field and work experience may be sufficient early in their career. However, a master's degree in health services administration or a related field might be required to advance.

....

All States and the District of Columbia require nursing care facility administrators to have a bachelor's degree, pass a licensing examination, complete a State-approved training program, and pursue continuing education. Some States also require licenses for administrators in assisted living facilities. A license is not required in other areas of medical and health services management.

(Emphasis added.) Based on the foregoing information, the AAO determines that a bachelor's degree in a related clinical field is the normal industry-wide requirement for entry into a position as clinical manager, or clinical department head, of a rehabilitation department in a healthcare organization. A bachelor's degree in the field is required to become qualified to perform services in health rehabilitation programs such as physical, occupational, recreational, or speech therapy. Accordingly, a clinical manager or clinical department head of a rehabilitation department qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The AAO concludes that the proffered position of rehabilitation coordinator is a specialty occupation.

The AAO agrees with counsel that a license is not required for the job because the duties of the position do not involve the practice of physical therapy. See *State of Texas Occupations Code*, Chapter 453. As previously discussed, the beneficiary earned a bachelor of science degree in physical therapy from a college in the Philippines in April 2001, which an educational credentials evaluation service has declared to be equivalent to a bachelor of science in physical therapy from an accredited U.S. college or university. The AAO determines, therefore, that the beneficiary qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) to perform services in the specialty occupation.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

ORDER: The appeal is sustained. The petition is approved.