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U.S. Citizenship  
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*Dv*

FILE: WAC 03 106 54093 Office: CALIFORNIA SERVICE CENTER Date: **MAY 09 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 service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision of the AAO will be affirmed. The petition will be denied.

The petitioner is a residential care business that seeks to employ the beneficiary as a part-time administrator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On motion, counsel submits a brief and additional evidence including a new credentials evaluation.

The AAO will first address the director's conclusion that the position is not 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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B and supporting documentation; (6) the AAO's decision to dismiss the

appeal; and (7) the petitioner's motion to reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a part-time administrator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 22, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail assisting with: directing and planning the administration of licensed facilities; overseeing contract nurses; supervising admissions; interviewing and evaluating residents concerning medical history and needs; consulting with the medical doctor, psychiatrist, or other specialist concerning treatment plans and making amendments, as directed; overseeing maintenance of and updating case histories, health examination reports, and other medical records; establishing, implementing, and/or modifying facility policies, objectives, procedures, "program and budget"; making recommendations regarding the sanitation and elimination of health hazards; recruiting, overseeing, and terminating staff; and developing and implementing a third facility. In her July 20, 2003 letter, counsel further describes the proposed duties as: "The level of responsibility is general supervision of the two care givers and activities supervisor, as well as of the contract nurses." Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in nursing for the proffered position.

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).

On motion, counsel states, in part, that the proffered position is primarily administrative, and only a small percentage of the proposed duties overlap with head nurse/nurse supervisor duties. Counsel states further that, contrary to the AAO's finding, the healthcare-related Internet job postings are similar to the proffered position. Counsel also states that even though the beneficiary does not hold an administrator's license, in accordance with an HQ memorandum, the H-1B petition may be approved for one year if the only barrier to licensure is the lack of a social security number.

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 Department of Labor's *Occupational Outlook Handbook (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 proffered position is described as a part-time administrator of the petitioner's residential care facilities for the elderly (RCFE). Although a review of the Medical and Health Services

Managers job description in the *Handbook* finds that an administrator position may qualify as a specialty occupation, the petitioner has not demonstrated that the proffered position is a specialty occupation. The *Handbook* indicates that 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. Further, Title 22 of the California Code of Federal Regulations, Division 6, Chapter 8, Article 6, 87564 Administrator – Qualifications and Duties, states that all residential care facilities for the elderly (RCFEs) shall have a *certified* administrator. (Emphasis added.) In this case, the record contains an evaluation indicating that the beneficiary holds the equivalent of a bachelor's degree in nursing (BSN). The proffered position does not require an administrator-related master's degree or State certification. Moreover, in a letter dated January 22, 2003, the petitioner's owner/administrator states: "Given our dramatic growth, we have found it necessary to hire an additional Administrator to ensure the smooth functioning of our internal operations." A review of the record, however, does not find any evidence of "dramatic growth." Information on the petition that was signed by the petitioner's owner/administrator on February 17, 2003, reflects that the petitioner has four employees and a gross annual income of \$493,000. Given the size of the petitioner's business, it is not clear that the beneficiary would perform predominantly administrator-related duties when the record indicates that the petitioner already has a full-time administrator. Accordingly, the division of duties between the petitioner's current full-time administrator and the proffered part-time administrator is unclear. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As discussed in the AAO's November 5, 2004 decision, the record also contains a letter from [REDACTED], Assistant Professor at the Seattle School of Nursing, who states in part that the proffered position qualifies as a specialty occupation because it requires the minimum of a baccalaureate degree in a health service or related field. She states further that an administrator is a licensed professional. In this case, however, the record contains no evidence that the petitioner requires a licensed professional or that the beneficiary holds an administrator's license. Further, the record indicates that the petitioner already employs a full-time administrator. [REDACTED]'s letter does not address these inconsistencies.

The record contains three Internet job postings for healthcare-related jobs, which counsel asserts were improperly discounted by the AAO. Counsel's assertion is noted. These job postings are not convincing evidence that the degree requirement is common to the industry in parallel positions among similar organizations, however, based on the deficiencies and discrepancies discussed above. Thus, as determined in the AAO's November 5, 2004 decision, the advertisements are not probative.

Based on the above discussion, the record does not include sufficient evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

The petitioner, therefore, 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. On motion, counsel does not address this issue. Further, as the record does not contain any evidence of the petitioner’s past hiring practices, the petitioner has not met its burden of proof in this regard. The evidence of record does not establish 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. 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.

In its November 5, 2004 decision, the AAO found that, beyond the decision of the director, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation, as the credentials evaluation service improperly evaluated the beneficiary’s training and work experience. On motion, counsel submits a new evaluation from ██████████ of the University of Rochester Medical Center, who concludes that the beneficiary holds the equivalent U.S. degree of a Bachelor of Science in Nursing (BSN). Although ██████████ asserts that she has authority to grant college-level credit for training and/or experience taken at other U.S. or international universities, the record contains no corroborating evidence in support of her assertion, such as a letter from the university provost. 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)). CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Further, even if the AAO were to accept the evaluation from ██████████, the beneficiary would still not be eligible to perform the duties of a specialty occupation because she does not possess the required master’s degree in the specific field of health services administration, long-term care administration, health sciences, public health, public administration, or business administration. For this additional reason, the petition may not be approved.

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 previous decision of the AAO, dated November 5, 2004, is affirmed. The petition is denied.