



U.S. Citizenship
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Services

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FILE: SRC 04 253 50869 Office: TEXAS SERVICE CENTER Date: **SEP 28 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 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 health care services placement agency that seeks to employ the beneficiary as a nurse coordinator. The petitioner, therefore, 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 and associated documents.

The director's decision to deny the petition was correct. The AAO bases its determination upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's January 14, 2005 brief on appeal, and the documents submitted with the brief. Accordingly, the appeal shall be dismissed and the petition will be denied.

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 following is a summary of information about the proffered position and its duties contained in the petitioner’s letters that were submitted with the Form I-129 and in response to the RFE. The beneficiary will perform “specific personnel duties pertaining to the [petitioner’s] growing needs.” The beneficiary will “administer to [the petitioner’s] health care and placement services”; “coordinate financial matters, such as budgeting, accounting, and determining the cost of [the petitioner’s] services”; “be an integral part of hiring, work, training, and performance of [the petitioner’s] employee nurses”; “formulate and implement policies and procedures governing the nurses’ employment”; and “be in intimate contact with [the petitioner’s] nurses and monitor certain daily routines.” The beneficiary will also “convey information regarding management of nurses to upper management,” and he “will be required [to] make recommendation to management regarding the efficiency of the nurses in terms of carrying out their duties.” The beneficiary will work at the petitioner’s office rather than “at a hospital or related health institution.” The proffered position “does not involve hands-on patient care,” and the beneficiary “will not be required to perform direct or indirect patient care.”

The evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), which provides for specialty occupation qualification of those positions whose normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position’s duties.

To the extent that they are described in the record, the proffered position and the duties that comprise it appear most closely related to the nurse administrator occupation as discussed in the section on Registered Nurses (RNs) in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*,¹ which the AAO recognizes as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook* identifies nurse administrators as nurses, normally with an RN license, who have “little or no patient contact” and “supervise nursing staff, establish work schedules and budgets, and maintain medical supply inventories.” The AAO notes, however, that the petitioner has not established the extent to which the beneficiary would supervise nursing staff: the record indicates that the nurses with whom the petitioner would be involved would be placed with health care institutions that are independent from the petitioner, and that are independently responsible for the nursing care rendered by the nurses supplied by the petitioner. The record contains no evidence of the extent, if any, that the beneficiary would be involved in day-to-day supervision of work performed at various job sites. There is also no indication of the beneficiary’s being involved with the maintenance of medical supply inventories.

The *Handbook* indicates that nurse administrators are not normally required to hold at least a bachelor’s degree in nursing, health administration, or any related specialty. Counsel’s reliance upon the 2002 INS (now CIS) memorandum on the adjudication of H-1B petitions for nurses is not persuasive.² The proffered position

¹ The AAO consulted the *Handbook*’s 2006-2007 edition.

² The document to which counsel refers is Memorandum from 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).

is not one of the types referenced in the memorandum as examples of administrative positions that may require at least a bachelor's degree in nursing requiring (i.e., "upper-level 'nurse manager' in a hospital administration position," or "Nursing Service Administrator" in a healthcare facility). Furthermore, as already discussed, the proffered position is not one that the 2006-2007 *Handbook* recognizes as requiring at least a bachelor's degree in a specific specialty.

Next, the evidence of record does not satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) by establishing that a degree requirement is common to the industry in parallel positions among similar organizations.

Factors often considered by CIS when determining this criterion 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)).

As already discussed, the *Handbook* does not report an industry-wide requirement of at least a bachelor's degree in a specific specialty for the type of position proffered here. The record also lacks evidence from firms, individuals in the industry, or professional associations about routinely recruiting and employing only individuals with at least a bachelor's degree in a specific specialty. In this regard, the AAO notes that the June 23, 2003 letter from the administrator of ACC Health Services, Inc. is not probative. It addresses a position with a job title different than the title of the proffered position, and it does not provide evidence that the duties of the position addressed in the letter are substantially similar to the duties of the proffered position. Furthermore, the letter speaks only of a preference, not a requirement for a degree; and the letter does not state that there is a requirement for any specific major or area of academic concentration.

The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that is, as one that is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The record contains no evidence that the proffered position is unique from or substantially more complex than nursing administrators that the *Handbook* recognizes as working without at least a bachelor's degree, or the equivalent, in a specific specialty. As evident in this decision's earlier summary of the proposed duties as described in the record, the duties are described only in generic terms that relate no substantive information about specific work that the beneficiary would perform for the petitioner. Consequently, the record does not distinguish the proffered position from the general range of nurse administrator positions, for which the *Handbook* indicates that a bachelor's or higher degree in a specific specialty is not a normal minimum requirement.

Next, the past-hiring-practice criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3) is not a factor. The petitioner presented no documentation relevant to this criterion, and it does not assert this as a basis for approval of the petition.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in nursing, health administration, or a related specialty. The record's information is limited to generalized statements about generic functions of the proffered position. Such limited information does not develop the proposed duties with sufficient specificity to demonstrate that the duties are so specialized or complex as to require knowledge usually associated with at least a bachelor's degree in a specific specialty.

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.