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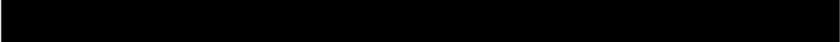


**U.S. Citizenship
and Immigration
Services**

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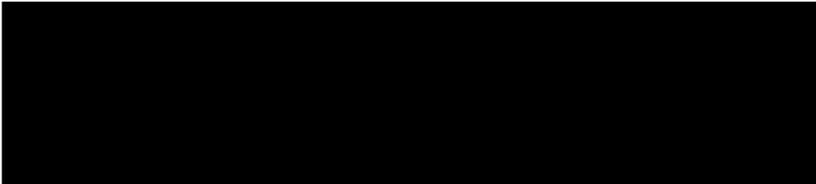


FILE: WAC 02 014 52966 Office: CALIFORNIA SERVICE CENTER Date: **AUG 09 2007**

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. The matter is now before the AAO. The appeal will be dismissed. The petition will be denied.

The petitioner claims to be a convalescent hospital with 126 beds, 130 employees, and \$3.6 million in gross annual income. It seeks to employ the beneficiary as a quality assurance specialist. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 30, 2001, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation and that the petitioner had not provided evidence that the beneficiary is qualified to perform the duties of a specialty occupation. On appeal, counsel for the petitioner asserts the director's decision is erroneous, as the position of "quality assurance coordinator" requires a degree.

The record of proceeding before the AAO contains: (1) the Form I-129 filed October 15, 2001 and supporting documentation; (2) the director's October 18, 2001 request for further evidence (RFE); (3) counsel's October 25, 2001 response to the director's RFE; (4) the director's October 30, 2001 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before rendering its decision.

The first issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In a September 15, 2001 letter appended to the petition, the petitioner indicated that it needed a quality assurance coordinator to interpret and implement quality assurance standards to ensure quality care to each patient. The petitioner stated:

[The beneficiary] will review the quality assurance standards, study existing policies and procedures and evaluate the effectiveness of the quality program. He will write quality assurance policies and procedures. [The beneficiary] will review the patients['] medical records-patient evaluation, nurses notes, home health aide notes, therapy notes and social worker notes for conformance to policies and completeness. He will work with the nursing supervisors in formulating the patient's treatment plan according to the physicians['] directions. [The beneficiary] will formulate the curriculum/program for the staff in services, particularly nurses and HHA's [sic]. In addition, [the beneficiary] will conduct in-service lectures to the staff in regards to improving and implementing quality assurance programs to improve the services.

In an October 25, 2001 response to the director's RFE, counsel for the petitioner added that the beneficiary would have direct contact with the patients and would spend 25% of his time reviewing patient progress, 25% of his time conducting lectures to the nursing staff, and 50% of his time providing support of the company's total quality management. Counsel reiterated and added further:

The job also includes reviewing and evaluating patients' medical records and applying quality assurance criteria. In addition, [the beneficiary] will select specific topics for review, such as problem procedures, drugs, high volume cases, high-risk cases and other factors. He will compile statistical data and write narrative reports, summarizing quality assurance findings. He will apply utilization review criteria and review patient records and personnel engaged in

quality assurance review of medical records. Finally, he will review the work product of resident nurses (LVN, CAN) and other medical personnel. This position requires a strong background in physical science, medical and/or health care services, which is the appropriate field

Also in response to the director's RFE, counsel asserted that although the proffered position was for a quality assurance coordinator, the quality assurance coordinator would also have to perform duties similar to and beyond the duties of a health services manager. Counsel contended that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicated that most quality assurance coordinators required a bachelor's degree and that the Department of Labor's *Dictionary of Occupational Titles (DOT)* reported that a quality assurance coordinator requires a specific vocational preparation (SVP) rating of 7. Counsel further indicated that although the petitioner had not previously hired anyone for the position, the petitioner required all applicants in specialized fields to possess a minimum of a baccalaureate degree. Finally, counsel claimed that the description of the duties of the position and the *DOT* job rating of 7 confirmed the complexity of the work warranted the knowledge associated with the attainment of a bachelor's degree.

Counsel also submitted several job announcements including positions for: (1) a donor case coordinator that listed a bachelor's degree in related field for the American Red Cross; (2) a quality assurance officer that indicated a BS in science or equivalent in job experience, also for the American Red Cross; (3) a quality assurance manager in products/services that required a bachelor's degree in microbiology, biology, food science, chemical, engineering or chemistry or equivalent experience for the Glenwood Group; and (4) a quality assurance manager for an unidentified company that required a BS degree or equivalent in biochemistry, chemistry, or the biological sciences with 10 years experience in invitro diagnostic, medical device, or pharmaceutical industries. Counsel also submitted a list of open positions for a search firm looking for quality assurance managers for pharmaceutical concerns that required a BS in Science/Engineering and a director of quality assurance for a pharmaceutical manufacturing concern that required a BS in biology or related science. Counsel also submitted information from the Red Cross and Del Mar Analytical indicating certain employees with quality assurance titles had degrees in biology and chemistry.

On October 30, 2001, the director denied the petition. The director observed that the petitioner and counsel had merely paraphrased the *DOT's* description of a quality assurance coordinator rather than providing a comprehensive description of the proposed duties. The director determined that the job announcements submitted were from companies not in the same industry as the petitioner and were not probative and there was no further evidence to establish that the duties and responsibilities for a quality assurance coordinator are specialized or complex.

On appeal, counsel for the petitioner repeats the description of the proposed job duties previously submitted and asserts that the duties are complex and specialized since they require familiarity with management principles and strong communication and leadership skills as well as knowledge in the health/life sciences to effectively monitor nursing staff and oversee the quality of healthcare services being rendered. Counsel again refers to the *Handbook's* discussion of health service managers and asserts that the proffered position involves the planning, directing, coordinating, and supervision of the delivery of healthcare. Counsel contends that the duties of the proffered position most closely resemble those listed in the *Handbook* as a health care

administrator and a health services manager and thus should be classified as a quality assurance coordinator. Counsel disagrees with the director's analysis of the submitted job announcements, asserting that the classified advertisement that indicates a BS degree or equivalent in biochemistry or the biological sciences with ten years experience in the invitro diagnostic, medical device or pharmaceutical industry, and the petitioner's care facility are both in the medical industry and so are similar.

Counsel's assertions are not persuasive. Preliminarily, the AAO finds that the petitioner has not provided documentary evidence to substantiate its claimed business operations. The petitioner identifies itself as the

[REDACTED] on the Form I-129 but its letterhead lists its name as the [REDACTED] and a pamphlet suggests the petitioner is associated with the [REDACTED]

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not contain the petitioner's federal income tax returns, quarterly wage reports, or licenses to operate a care facility of any type. Thus the record does not contain sufficient evidence to substantiate the petitioner's level of income, its number of employees, or that it continues to operate as an ongoing concern. Going on the 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 190 (Reg. Comm. 1972)).

The AAO now turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the Department of Labor's *Handbook* for its information about the duties and educational requirements of particular occupations. The 2006-2007 edition of the *Handbook* does not identify a position titled quality assurance specialist coordinator and in this matter the petitioner has failed to provide a specific list of tasks or any other documentary information that could elevate the proffered position to one that would normally require a bachelor's degree to properly perform the duties. The petitioner and counsel both provide a broad overview of the position, relying on the generalities of the *DOT* that lists a range of duties that may be performed within an occupation. Such a generalized description does not establish a position as a specialty occupation. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In the instant matter, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing. It has not detailed the actual work to be performed for this position rather than describing the occupation. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Moreover, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position

would require. Again, the record does not demonstrate that the position of quality assurance coordinator, as generally described in this matter, would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The AAO declines to accept the broad overview of the proffered position. In this matter, the duties described could comprise the duties of an administrative services manager, a training and development manager, an office manager, or of a nurse as described in the *Handbook*. The duties lack the specificity necessary to describe a particular occupation. Further, the *Handbook* indicates that these occupations do not require possession of a bachelor's degree in a specific discipline to perform the duties associated with the occupations. Thus, the record is insufficient to enable the AAO to determine that the proffered position is a specialty occupation. In addition, as observed above, the petitioner has failed to provide specific information relating the duties of the proffered position to its business operations and has further failed to substantiate the level of its business operations.

The AAO notes counsel's assertion that the position includes planning, directing, coordinating, and supervising the delivery of health care and that the duties of the proffered position resemble the duties of a health care administrator and a health services manager. The AAO, however, does not find evidence in the record to substantiate counsel's claim that the duties of the position resemble either of these professions. Again, going on the 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. at 165. In addition, the AAO finds that neither counsel nor the petitioner explain or otherwise clarify how the purported duties of a health care administrator or a health services manager should be considered the duties of a quality assurance coordinator. The petitioner has not established a baccalaureate degree or higher degree or its equivalent is normally the minimum requirement for entry into the particular position as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish the first prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submitted copies of several job listings and information on other organizations' quality assurance employees. Upon review of the job advertisements submitted, the AAO does not find that the petitioner is similar to the Red Cross or pharmaceutical businesses. Although the Red Cross and the pharmaceutical industry may involve medical and health issues, these organizations are vastly different than a convalescent care facility. Without substantiating evidence demonstrating the similarity between the petitioner and the advertising organizations, the petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In addition, the AAO observes that the advertisements submitted and the list of other organizations' employees do not provide detailed descriptions of the advertised positions or the positions held. In the absence of a meaningful description of the proffered position coupled with detailed information about the specific work required of positions in other industries, the petitioner has also failed to establish that the proffered position is parallel to other positions in any industry. The record does not establish that other organizations in the petitioner's business routinely employ and recruit only degreed individuals in positions that may be considered parallel to the proffered position.

The petitioner has also failed to establish the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The record does not contain evidence that would show the proffered position is so complex or unique that only an individual with a degree in a specialty can perform the

position or that 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 degree in a specialty. The petitioner claims it is a convalescent hospital but has not provided substantiating evidence of the number of individuals it employs, its level of revenue, or other documentary evidence that could assist in an analysis of the duties sufficient to distinguish the generally described duties from similar but non-degreed employment. The petitioner has not provided sufficient evidence to demonstrate the work associated with the position is so complex or unique that an individual must have degree to perform the duties. Likewise, without a meaningful description of the duties of the position accompanied by documentary evidence of the petitioner's operations, the AAO is precluded from determining that the nature of the 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.

The record does not contain evidence to satisfy the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) that the petitioner has a history of exclusively recruiting and hiring only persons with at least a bachelor's degree in a specific specialty to perform the duties of the proffered position.

Both counsel and the petitioner fail to address the deficiencies in the record on appeal and fail to present evidence that would overcome the director's decision. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The second issue in this proceeding is whether the petitioner has established that the beneficiary is eligible to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner has provided a copy of a foreign degree issued by the University of Santo Tomas in Manila, Philippines listing the beneficiary's degree as a bachelor's of science in biology. The petitioner has also provided copies of the beneficiary's transcripts. The record, however, does not contain an evaluation of the beneficiary's foreign degree. The record does not contain sufficient evidence of the beneficiary's education, specialized training, and/or progressively responsible experience or recognition of the beneficiary's expertise in the specialty. Thus the record is insufficient to establish the beneficiary's eligibility to perform the duties of any specialty occupation. For this additional reason, the petitioner will not be approved.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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