

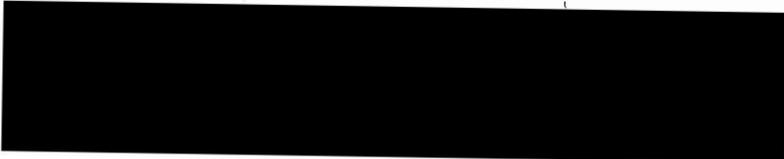


U.S. Citizenship  
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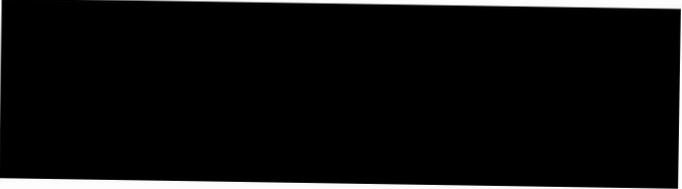


FILE: WAC 02 185 52784 Office: CALIFORNIA SERVICE CENTER Date: **AUG 24 2007**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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 home health care business that seeks to employ the beneficiary as a full-time quality assurance manager. 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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The 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) consistently 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply 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 (5<sup>th</sup> 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 petitioner seeks the beneficiary’s services as a full-time quality assurance manager. Evidence of the beneficiary’s duties includes: the petitioner’s April 24, 2002 letter in support of the petition and counsel’s December 10, 2002 response to the director’s request for evidence. As stated by the petitioner’s administrator/owner in her April 24, 2002 letter, the proposed duties are as follows:

[I]nterpret and implement quality assurance standards to ensure quality care to each patient. He will review the patient’s 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 physician’s directions. He will formulate the curriculum/program for the staff in services, particularly nurses and HHA’s. In addition he will conduct in-service lectures to the staff in regards to improving and implementing quality assurance programs to improve the services.

[O]rganize and coordinate the staff so as to assure quality services to the patients [and] assure . . . complete customer/patient satisfaction.

In response to the director’s RFE, counsel further describes the proposed duties as follows:

- [I]nterpret and implement quality assurance standards in a convalescent hospital to ensure quality care to each patient;
- [R]eview quality assurance standards and study the facilit[y's] policies and procedures;
- [W]rite quality assurance policies and procedures;
- [I]nterview the hospital's medical personnel and patients to evaluate effectiveness of the staff's performance. He will also review and evaluate patients' medical records, and apply quality assurance criteria;
- [Select] specific topics for review, such as procedural problems, drugs, high volume and high risk cases, or other factors;
- [C]ompile statistical data and write narrative reports summarizing quality assurance findings;
- [A]pply utilization review criteria and review patient records and personnel engaged in quality assurance review of medical records; and
- Review work product of resident nurses (LVN, CNA) and other medical personnel.

The director found that the proposed duties are primarily those duties of a registered nurse. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proposed duties, which include overseeing registered nurses, physical therapists, respiratory therapists, dieticians, and social workers, are so complex as to require a bachelor's degree. Counsel states further that the proffered position closely parallels a health service manager position. According to counsel, the petitioner has satisfied two criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the degree requirement is common to the industry in parallel positions among similar organizations, and 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. Counsel states that the record contains job listings from similar businesses as supporting documentation.

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 *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 AAO does not concur with counsel that the proffered position is similar to that of a medical and health services manager, as described in the *Handbook*. A review of the *Handbook*, 2006-07 edition, finds that medical and health services managers plan, direct, coordinate, and supervise the delivery of health care. In this matter, the petitioner has provided a general overview of the tasks associated with the position. For example, the petitioner indicates that the successful incumbent in the position will review, interpret, write, and implement quality assurance standards; however, the petitioner does not address how these duties comprise the fundamental functions of planning, directing, coordinating, or supervising the delivery of health care. Such a broadly worded description fails to establish that the duties of the position require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in a specific specialty as a minimum for entry into the occupation in the United States. The *Handbook* does not identify a position titled quality assurance specialist 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.

In addition, the petitioner's organizational hierarchy is unclear. Although counsel describes the petitioner as a "large scale medical services provider," the record contains no evidence in support of his claim, such as federal income tax returns.<sup>1</sup> Nor does the record contain evidence in support of counsel's claim that the proposed duties include overseeing registered nurses, physical therapists, respiratory therapists, dieticians, and social workers. 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 information on the petition reflecting that the petitioner has 48 employees, is noted; however, the record contains no evidence in support of this claim, such as quarterly wage reports. 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)). Further, information on the petition reflects the amount of the petitioner's gross annual income as "unavailable." The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

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<sup>1</sup> A review of the website at <http://www.hospital-data.com/hospitals/> finds that the petitioner has "0.50" licensed practical/vocational nurses and two full-time registered nurses.

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. Moreover, 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. Moreover 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 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).

Regarding parallel positions in the petitioner's industry, counsel submits Internet job postings for quality assurance coordinators. The listings provided either fail to offer meaningful descriptions of the positions advertised or rely on duties unlike the duties listed by the petitioner. The advertisers include the following: a leading provider of dental and vision benefit plans; Lutheran Social Services of the National Capital Area; an international consortium of pediatric cancer centers; and the Alameda County Public Health Department. These listings do not indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. The record also does not include any evidence from individuals, firms, or professional associations regarding an industry standard. 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 this matter, the petitioner claims it is a home health care business 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 a degree to perform the duties. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

For the reasons discussed above, the petitioner has not satisfied any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (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. As counsel does not address this issue on appeal, it will not be discussed further. 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.

Counsel states, on appeal, that the proposed duties, which entail, in part, overseeing registered nurses, physical therapists, respiratory therapists, dieticians and social workers, are so complex as to require a bachelor's degree or its equivalent. As discussed above, the record does not contain sufficient documentary evidence that the duties of the proffered position contain elements different from those of a registered nurse, an administrator, an office manager, or a training and development manager. Without a meaningful list of duties related to its specific business operations, the petitioner has not established that the generally described duties are either specialized or complex. The AAO observes that the record does not contain documentary evidence of the petitioner's license to provide home health care services, any information on the number of people it serves, or the regulatory environment in which it operates. 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. Accordingly, the petitioner has failed to classify the proffered position as a specialty occupation pursuant to the criterion at 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.

The petition will be denied and the appeal dismissed for the above stated reason. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition is denied.