



U.S. Citizenship
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Services

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FILE: LIN 05 185 52077 Office: NEBRASKA SERVICE CENTER Date: JAN 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:
[Redacted]

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 provides home healthcare. It seeks to employ the beneficiary as an operations manager. The petitioner 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 on the ground that the proposed position is not a specialty occupation, and the beneficiary is not qualified to perform the duties of a specialty occupation. Counsel submitted a timely appeal and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date the AAO has not received any additional evidence into the record; the record therefore is complete.

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) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an operations manager. Evidence of the beneficiary's duties includes: the Form I-129, the attachments accompanying the Form I-129, the petitioner's support letter, and its response to the RFE. According to this evidence, the beneficiary's duties and the breakdown of time performing those duties are as follows: assessing the needs of the home health care service department and personnel (10 percent); facilitating change by identifying problems in personnel functions or professional practices that interfere with safe, efficient, and appropriate delivery of service (3 percent); presenting problems and solutions to the president (2 percent); exercising authority on behalf of the company or efficiently recommending actions (10 percent); participating in performance improvement activities: problem identification, plans/methods, implementation, reporting, or evaluation (5 percent); conducting orientation of new personnel (3 percent); analyzing and summarizing the current and projected financial position by reviewing and evaluating financial information; detailing assets, liabilities, and capital; and preparing balance sheets and profit and loss statements (3 percent); assigning work and directing the work flow assigned to personnel (5 percent); directing employees and activities in a cost effective manner (5 percent); initiating and directing activities to enhance productivity (2 percent); acting as liaison staff and ensuring delivery of services to customers and efficient functioning by communicating with personnel, vendors, the community, and other branches of the facility so as to gather data in order to make or report decisions (2 percent); establishing performance standards and conducting appraisal interviews with subordinates (3 percent); interviewing, hiring, disciplining, and suspending personnel (10 percent); monitoring key activities and outcomes and obtaining solutions to problems and improving services and operations in a cost effective manner (10 percent); assuring that workloads are equitably distributed and minimize staff overtime (5 percent); establishing standards for personnel administration and performance (5 percent); enforcing regulatory department policies and procedures; participating in periodic competency evaluation (mandatory in-service programs) (5 percent); developing, evaluating, recommending, and monitoring adherence to policies, quality improvement objectives, and procedures and standards including those promulgated by regulatory bodies and the facility (5 percent); generating informational reports and conducting analysis to determine areas needing improvement to increase quality, efficiency, and productivity (2 percent). The petitioner stated that the scope of problems must impact groups, persist over time, result in positive client's service outcomes, and address documented detrimental effects of safe delivery of services and efficient functioning (5 percent). For the proposed position the petitioner seeks to employ the beneficiary who holds the educational equivalent to a U.S. bachelor's degree in nursing.

The director denied the petition, finding that the proposed duties are those of an office manager, and therefore would not require a baccalaureate degree in a specific specialty. The director found the submitted job postings failed to establish the proposed position as a specialty occupation. The director referenced the qualifications of a medical and health services manager as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*); he stated that the beneficiary's degree differs from that of a medical and health services manager. The director noted that the beneficiary's experience does not qualify her to perform the duties of a specialty occupation.

On appeal, former counsel states that the director's decision indicates that the beneficiary's duties are similar to those of medical and health services positions and that a bachelor's degree in health sciences is required. Former counsel asserts that the beneficiary is qualified to perform the duties of the proposed position: she holds a bachelor's degree in nursing, which is in the health sciences.

Upon review of the record, the petitioner has established none of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The proffered position is therefore not a specialty occupation.

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Factors often considered by CIS when determining whether a position is a specialty occupation includes: whether the 2006-2007 edition of 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 first criterion to be considered is 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The *Handbook* reveals that the proposed duties are similar to a registered nurse (RN); it states the following about nurses:

Some nurses move into the business side of health care. Their nursing expertise and experience on a health care team equip them to manage ambulatory, acute, home-based, and chronic care. Employers—including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others—need RNs for health planning and development, marketing, consulting, policy development, and quality assurance. Other nurses work as college and university faculty or conduct research.

With respect to the educational requirements of nurses, the *Handbook* relays:

There are three major educational paths to registered nursing: a bachelor's of science degree in nursing (BSN), an associate degree in Nursing (ADN), and a diploma.

The *Handbook* explains that all states and the District of Columbia require that students graduate from an approved nursing program and pass a national licensing examination in order to obtain a nursing license.

The beneficiary's duties are encompassed within the areas of policy development, quality assurance, and health planning and development, the areas the *Handbook* indicates employers need RNs for.

It is noted that the beneficiary's duties relating to analyzing and summarizing the petitioner's financial position require knowledge of accounting. Even though a position involves accounting principles this is insufficient to establish it as a specialty occupation, for not all positions applying accounting principles require the application of baccalaureate-level knowledge in accounting or a related field. For instance, the *Handbook's* subsection "Sources of Additional Information" refers the reader to the Internet site for the Accreditation Council for Accountancy and Taxation (ACAT), the professional organization that provides the credentials Accredited Business Accountant®/Accredited Business Advisors® (ABA).¹ That Internet site reveals that a degree in accounting or a related specialty is not required for ABA accreditation. Eligibility for the eight-hour comprehensive examination for the ABA credential requires three years of "verifiable experience in accounting, taxation, financial services, or other field requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination."² "Up to two" of the required years of work experience "may be satisfied through college credit."

The *Handbook* states that junior accountants have 2-year degrees. It states:

Many graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

The *Handbook* also states that financial clerks have at least a high school diploma, and for bookkeepers and accounting clerks, employers often require an associate's degree in business or accounting.³

¹ At its Internet site (<http://www.nsacct.org/acat.asp>), the National Society of Accountants describes ACAT as follows:

The Accreditation Council for Accountancy and Taxation (ACAT) is an independent accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting, taxation, information technology and related financial services.

² The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests "proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics."

³ The website from Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net) reflects that an associate's degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the GAAP, forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, which is an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

The submitted Form 1120S reflecting \$380,372 in gross receipts is not sufficient to establish that the duties relating to accounting would require baccalaureate-level accounting skills. Because the proposed duties associated with nurses do not require a baccalaureate degree in a specific academic field, the petitioner fails to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is not the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that the degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits job postings. The director was correct in finding that the job postings fail to establish the proposed position as a specialty occupation. The record contains no evidence showing that the companies in the postings (City of Ypsilanti Senior Citizens' Center, Affiliated Internists, a cardiology office, McLaren Medical Management, Karmanos Cancer Institute, Tufts Associated Health Plan, Inc., a financial services company, and Massachusetts General Hospital,) are similar in nature to the petitioner. Consequently, the job postings fail to establish that the degree requirement is common to the industry in parallel positions among similar organizations to the petitioner.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to establish that the particular position is so complex or unique that it can be performed only by a person with a degree in a specific academic field. Employers need RNs for policy development, quality assurance, and health planning and development (which are the areas pertaining to the proposed duties); but they do not require RNs to hold a bachelor's degree in a specific academic field to perform these duties. It has not been established by the petitioner that the proposed duties relating to accounting require baccalaureate-level knowledge in accounting. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific academic field.

The petitioner has provided no evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that it normally requires a degree or its equivalent for the proposed position.

To satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific academic field. Employers use RNs for policy development, quality assurance, and health planning and development (which are the areas of the proposed duties); they do not require RNs to hold a baccalaureate degree in a specific academic field to perform such duties. The petitioner has not demonstrated that the proposed duties associated with accounting require baccalaureate-level knowledge in accounting. As such, the petitioner fails to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific academic field, 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. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.