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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date: OCT 01 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director revoked approval of the H-1B nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained; the service center director's decision revoking approval of the petition will be withdrawn; and the approval of the petition will remain in effect as granted in the service center director's initial decision on this petition.

The petitioner is a corporation engaged in the care of the elderly and persons with special needs at its facility in Puerto Rico. The H-1B petition was filed on May 17, 2007 and approved on March 7, 2008 for the beneficiary to serve as the petitioner's Nursing Care Manager for the period June 30, 2007 to June 30, 2009, 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).

On March 12, 2009, the service center director issued a Notice of Intent to Revoke (NOIR) approval of this petition.¹ After reviewing the petitioner's response to the NOIR, the service center director issued a decision revoking approval of the petition on the basis stated in the NOIR, namely, that the petition did not merit approval because the record of proceeding failed to establish the proffered position as a specialty occupation. That revocation decision is now here before the AAO on appeal.

Based upon its review of the entire record of proceeding, the AAO concludes that the record of proceeding does not support the ground cited by the service center director for the revocation action. Therefore, the appeal must be sustained.

Specifically, the AAO finds that the following evidence establishes the proffered position as a specialty occupation: the petitioner's descriptions of the duties to be performed by the beneficiary; the sections that the petitioner submitted from the laws of Puerto Rico relating to the educational credentials required for the practice of various levels of nursing in that jurisdiction; the petitioner's declaration on appeal of the reasons it specified a bachelor's degree in nursing science (BNS) as the minimum acceptable credential for its Nursing Care Manager; the declaration of the physician in charge of patient care at the petitioner's facility, in which he persuasively explains why he believes that at least a BNS is required for the responsibilities that the petitioner's Nurse Case Manager must shoulder to ensure proper care of the petitioner's patients; and the letter from the President of the Board of Nursing Examiners of Puerto Rico, expressing the Board's belief that the duties to be performed by the beneficiary, and, in particular, the proffered position's requirement for exercise of independent initiative in case management, require at least a bachelor's degree in nursing in order to comply with Law 9 of 1987 "To Regulate the Practice of Nursing in Puerto Rico."

¹ The NOIR and the subsequent decision revoking approval of the petition reflect that the service center director was acting under the authority of the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), which states that a director may revoke approval of a petition if that approval "violated paragraph (h) of this section [that is, the regulations at 8 C.F.R. § 214.2(h) governing approval of H petitions] or involved gross error."

Accordingly, the AAO finds that the service center director erred in revoking approval of this petition on the ground specified, as the record of proceeding establishes that the particular position for which the petition was filed qualifies as a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that is, as a “particular position [of the petitioner] so complex or unique that it can be performed only by an individual with a [baccalaureate or higher] degree [or its equivalent in a specific specialty].” Consequently, the appeal will be sustained; the director’s decision revoking approval of the petition will be overturned; and the approval of the petition stands as granted by the service center director’s decision of March 7, 2008.

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained; the director’s decision revoking approval of the petition is withdrawn; and the approval of the petition remains in effect as granted by the service center director’s initial decision of March 7, 2008.