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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

D2

[REDACTED]

DATE: **SEP 06 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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:

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 denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on [REDACTED] 2010. In the Form I-129 visa petition, the petitioner describes itself as a nonprofit entity that operates specialized inpatient long-term acute care and medical and physical rehabilitation facilities. The petitioner seeks 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 [REDACTED] 2010, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserted that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

Upon review of the documentation, the AAO found the evidence of record insufficient to establish eligibility for the benefit sought and issued a request for evidence (RFE) on [REDACTED] 2012. In issuing the RFE, the AAO provided the petitioner one additional opportunity to submit a detailed list of specific duties to establish that the proffered position qualifies as a specialty occupation.

Upon review of the entire record, we find that the petitioner has overcome on appeal the director's sole ground for denying this petition. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The evidence presented in this particular record of proceeding establishes that the duties of the proffered position are so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. See 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). This finding is further corroborated by the fact that the supporting Labor Condition Application (LCA) was certified for a Level IV wage, indicating that the position requires the use of advanced skills and diversified knowledge to solve unusual and complex problems. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). The petitioner has also established that the position proffered here otherwise meets the requirements of a specialty occupation as that term is defined by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In addition, the AAO has reviewed the qualifications of the beneficiary and find her qualified to perform the duties of the proffered position.

The burden of proof in visa petition proceedings 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 [REDACTED] 2010 decision is withdrawn, and the petition is approved.