

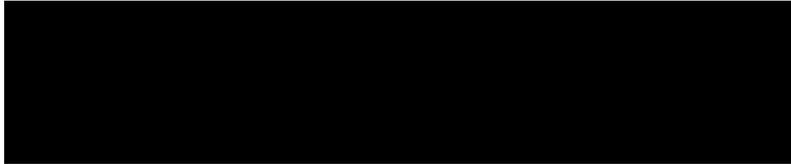


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U.S. Department of Justice
Immigration and Naturalization Service

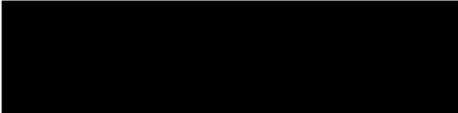
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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-00-105-50057 Office: Vermont Service Center Date: 07 JAN 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Vermont Service Center. The Service subsequently determined that the petition had been approved in error based on the conclusion that the proffered position does not qualify as a specialty occupation. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a non-profit hospital/medical center with 1300 employees. It seeks to employ the beneficiary as a registered nurse for a period of three years. The director determined the petitioner had not established that the proffered position qualifies as a specialty occupation.

On appeal, counsel submits a letter.

The record shows the petition was initially approved on April 17, 2000. The director subsequently determined that the petition had been approved in error based on a determination that the proffered position does not qualify as a specialty occupation and the beneficiary does not qualify to perform services in a specialty occupation.

On May 24, 2000, the director issued a notice advising the petitioner of his intent to revoke the approval of the petition, and of the reasons therefore. The petitioner was granted thirty days to respond to the notice.

In response to the notice, the petitioner asserted that the proffered position requires the services of an individual with a BSN degree and successful completion of all examinations required for certification by the New York State Department of Education. The petitioner submitted an educational evaluation report of the beneficiary's academic credentials, the beneficiary's New York State license as a registered nurse, and a description of the duties of the proffered position. The evaluation report found the beneficiary's three-year degree in nursing and bachelor of art degree in Korean language and literature from a Korean university to be equivalent to a bachelor of science degree in nursing from an accredited institution of higher education in the United States.

The director subsequently found that the petitioner had established that the beneficiary qualifies to perform services in a specialty occupation. However, the director revoked the approval of the petition based on a determination that the petitioner had not submitted sufficient evidence to establish that the proffered position qualifies as a specialty occupation.

On appeal, counsel contends that the approval of the petition was revoked in error. Counsel asserts that Saint Joseph's Medical Center requires holders of the proffered position to possess a BSN degree and a nursing license issued by New York State or another state. Counsel asserts that the proffered position qualifies as a specialty occupation due to the fact that the job duties are "vast and complex."

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the proffered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

diagnosing and treating human responses to actual or potential health problems through such services as case finding, health teaching, health counseling and provision of care supportive to or restorative of life and well-being, and executing medical regimens prescribed by a licensed or otherwise legally authorized physician or dentist.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position of registered nurse would normally require a bachelor's degree in nursing or a related field. A review of the DOL's Handbook, 2000-2001 edition at pages 210-212 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a registered nurse. Some registered nurses hold baccalaureate degrees while others hold diplomas or associate (two-year) degrees. Additionally, the Handbook indicates that attempts to raise the educational requirements for a registered nursing license to a baccalaureate degree in nursing have not been successful. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as nursing, for the offered position. The performance evaluation form submitted by the petitioner indicates that registered nurses at Saint Joseph's Medical Center must be graduates of a registered professional nursing program and must be currently licensed to practice as a registered nurse in New York State. The form does not specify that registered nurses employed at that facility must possess a BSN degree.

Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, while the petitioner asserts that the duties of the proffered position are so complex and specialized that it requires the services of nurses with a BSN degree, it has not submitted sufficient evidence to corroborate such assertion.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.