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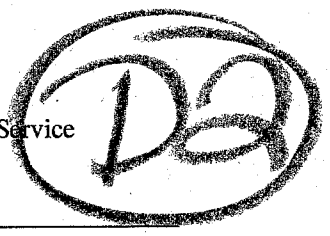
U.S. Department of Justice

Immigration and Naturalization Service



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

File: WAC-01-062-52658 Office: California Service Center Date: JAN 16 2003

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:

INSTRUCTIONS:
This is the decision 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.

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 that 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 that 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 denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a home care provider for developmental disabled adults. It has eight employees and a gross annual income of $944,000. It seeks to employ the beneficiary as a utilization review coordinator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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.

The director denied the petition because the position appears to be that of a registered nurse and thus does not require a baccalaureate degree. The director further found that the petitioner had submitted a paraphrasing of the definition of a "utilization review coordinator" rather than a comprehensive description of the beneficiary's actual proposed duties. On appeal, counsel states, in part, that the proffered position is that of a utilization review coordinator, a position that qualifies as a specialty occupation. Counsel further states that a baccalaureate degree or an equivalent thereof is the normal requirement for entry into the position.

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 offered 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:

> He will analyze the patient or client's medical history to determine legitimacy of admission, treatment and length of stay in health care facility. [The beneficiary]

> will analyze patient records to determine compliance with government and insurance company health insurance and reimbursement policies. He will review facility's internal policies and procedures regarding admission, treatment, emergencies, staff responsibilities, criteria for continued confinement, exit/release requirements, maintenance of services. He will set admission criteria and review applications for patient admission, and he will recommend appropriate action on application. [The beneficiary] will also review inpatient medical records against established criteria and he will recommend appropriate changes or policy actions. He will confer with facility management, including medical and other professional staff, regarding streamlining admission requirements and procedures, improving treatment procedures and priorities, and determining continuance of health care/treatment.

First, the Service does not agree with counsel's argument that the beneficiary is a health services manager, an occupation that would normally require a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration, or a bachelor's degree for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. (It is noted that the beneficiary holds a bachelor of nursing degree.)

In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 75, the Department of Labor (DOL) describes the job of a health services manager as follows:

> The structure and financing of healthcare is changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care . . . Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of interrelated services, for example, those ranging from inpatient care to outpatient follow-up care.
>
> In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finance, facility operations, and admissions, and have a larger role in resident care.

The record reflects that the petitioner, which is a home care provider for developmental disabled adults, employs eight persons and has a gross annual income of $944,000. The proffered position is not that of a health service manager, as described above. For example, there is no evidence that the position offered includes complex health service managerial duties such as managing finance and facility operations.

The duties that the petitioner endeavors to have the beneficiary perform are primarily those of a registered nurse/supervisory nurse. In contrast to the description of a health services manager, in its Handbook, the DOL describes the position of a registered nurse/supervisory nurse as follows:

> . . . RNs also develop and manage nursing care plans . . .
>
> *Head nurses* or *nurse supervisors* direct nursing activities. They plan work schedules and assign duties to nurses and aides, provide or arrange for training, and visit patients to observe nurses and to ensure proper delivery of care. They also may see that records are maintained and equipment and supplies are ordered.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a registered nurse/nurse supervisor position rather than a health services manager position. For example, the petitioner states that the beneficiary will be responsible for "analyz[ing] patient records to determine compliance with government and insurance company health insurance and reimbursement policies." Such duties fall within the administrative and supervisory tasks associated with a registered nurse, as described above. 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 specific specialty, for the offered position. Third, although the record contains numerous job advertisements, 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, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of a registered nurse/supervisor nurse, rather than a

health services manager. According to the DOL in its Handbook, at page 269, there is no requirement of a baccalaureate or higher degree in a specific specialty for employment as a registered nurse/supervisor nurse. In the 2002-2003 edition of the Handbook, the DOL states the following about the training and educational requirements for registered nurse/supervisor nurse positions:

> There are three major educational paths to registered nursing: associate degree in nursing (A.D.N.), bachelor of science degree in nursing (B.S.N.), and diploma.
>
> . . . Generally, licensed graduates of any of the three program types qualify for entry-level positions as staff nurses.
>
> . . . some career paths are open only to nurses with bachelor's or advanced degrees. A bachelor's degree is often necessary for administrative positions, and it is a prerequisite for admission to graduate nursing programs in research, consulting, teaching, or a clinical specialization.

Upon review of the proposed duties, it appears that the proffered position is primarily that of a registered nurse/supervisor nurse. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty is the minimum requirement for any registered nurse position, including the type being offered to the beneficiary. 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.

ORDER: The appeal is dismissed.