

Policy Memorandum, July 11, 2014 – Review

TED Division

Subject: Adjudications of H1B Petitions for Nursing Occupations

Class Discussion: February 17 and 19, 2015, 8:30 – 10:30 AM.

This is a review and analysis of the Memo. We will discuss the changes from the 2002 Johnny Williams Memorandum on nurses. We will also discuss the overall adjudication points of analyzing the evidence for the nursing profession and the requirements for the position and beneficiary to qualify for an H1B Specialty Occupation.

Agenda

1. Review the recent H1B nursing occupation memo
2. Discuss the points of applying the evidence for determining eligibility of nursing positions.
3. Question and answer session with the SMEs.

Preponderance of evidence is assumed for all scenarios.

- I. H1B Nonimmigrant statute and regulations.
 - A. INA 101 (a)(15)(H)(i)(b)
 - B. 8 CFR 214.2(h)(4)(ii)
 - C. 8 CFR 214.2(h)(4)(iii)(A)
- II. The H1B position defined
 - A. Specialty Occupation: A theoretical and practical application of a body of highly specialized knowledge....
 - B. Attainment of a bachelor's degree or higher in the specific specialty
- III. 8 CFR 214.2(h)(4)(iii)(A) – The position must meet one of 4 prongs
 - A. A baccalaureate or higher degree or its equivalent normally the minimum requirement for entry into the position.
 - B. The degree requirement is common to the industry in parallel position among similar organizations or an employer may show that the position is so complex or unique that it can be performed only by an individual with a degree.
 - C. The employer normally requires a degree for the position.
 - D. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with attainment of a degree.
- IV. Registered Nurses (RNs) generally do not qualify as a specialty occupation.
 - A. Three paths to attain an RN degree.
 1. A Bachelor of Science Degree in Nursing (BSN). 3-4 years
 2. An Associates Degree in Nursing (ADN) 2-3 years
 3. An approved nursing program. 2-4 years.

- B. RNs can continue education after graduating to attain a BSN or masters degree.
 - C. Health care facilities can pass testing by programs like the magnet program to show their facility has achieved excellence in nursing personnel.
 - D. Advanced Practice Registered Nurse (APRN) positions denote an attainment of a higher level of education.
 - 1. CNM - Certified Mid-wife Nurse
 - 2. CNS - Certified Clinical Nurse Specialist
 - 3. CNP – Certified Nurse Practitioner
 - 4. CRNA - Certified Registered Nurse Anesthetist
- V. Registered Nursing Job Descriptions
- A. Addiction RNs
 - B. Cardiovascular RNs
 - C. Critical Care RNs
 - D. Many more.
- VI. Licensure – besides position and beneficiary qualifications, licensure requirements must also be examined. Requirements are applies in all 50 states.
- A. Must graduate from an approved nursing program.
 - B. Must Pass the National Council Licensure Examination - NCLEX
 - C. It should be noted that licensure requirements do not include having a BS degree.
 - D. Licensure endorsements and for multi-state qualification is available in some states.
- VII. The three determining factors for H1B nursing requirements.
- A. Bachelors of Science degree (BS)
 - B. Position qualifies as a specialty occupation
 - C. Licensure.
- VIII. Examining the evidence.
- A. Making the determination of the position and the beneficiary’s qualifications.
 - B. Applying the evidence
- IX. Beneficiary’s degree
- A. It must be clearly shown that the beneficiary’s education and/or work experience shows that the achievement of a bachelor’s degree has been completed, as is normally done in all H1B occupations, and documentation must be included. (Diploma, transcripts, etc.)
 - B. Registered Nurses who have received an associate’s degree may be working towards a bachelor’s degree but have not yet achieved it.
 - C. Bachelor’s degree level experienced can be used as equivalence to a degree but must be documented and proven (very difficult)
 - D. Foreign Equivalence must be proven.
 - E. The degree must relate directly to the position.
 - F. A bachelor’s degree is not in and of itself enough to warrant approval. The position must be considered.

- X. The position must satisfy one of the four prongs in 8 CFR 214.2(h)(4)(iii)(A).
- A. Prong 1 – A bachelors or higher degree is normally the minimum requirement for entry into the position.
 - 1. The Occupational Outlook Handbook (OOH). Can lead to helping determine if a degree is normally a minimum requirement.
 - 2. Other evidence to show a need by the position for formal education leading to a bachelor’s degree as minimally necessary to attain such knowledge to perform the duties.
 - 3. Description of educational credentials normally required for the position by the petitioner.
 - B. Prong 2 – The degree requirement is common to the industry in parallel positions in similar organization or is so complex or unique that it can only be performed by an individual with a degree.
 - a. Submissions from professional associations
 - b. Submissions from individuals or similar firms in the petitioner’s industry attesting that personnel in parallel positions normally require a degree.
 - c. Description of duties specifically identifying any tasks that are so complex or unique that only a degreed individual could perform them.
 - d. Evidence showing the consistent need for the position employees to receive advanced training or classes to perform their tasks.
 - C. Prong 3 – The employer normally requires a degree or its equivalent for the position.
 - a. Past hiring ads and hiring records for the position.
 - b. Current roster of employees in the position with education and experience listed.
 - D. Prong 4 – The nature of the duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate degree.
 - a. The duties are shown to be more specialized and complex as compared with duties of parallel positions that do not normally require a degree.
 - b. Past history of employees in the position possessing a degree.