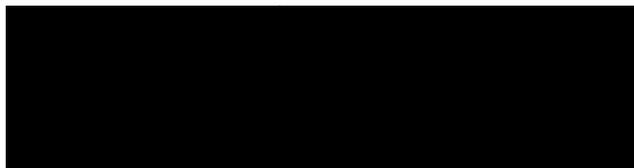


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536



File: WAC 01 243 52105 Office: California Service Center Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

NOV 25 2003

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

**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 Citizenship and Immigration Services (CIS) 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.

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a permanent and temporary staffing agency. It seeks to employ the beneficiary permanently in the United States as a physical therapist. The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The director determined that the petitioner had not established that the beneficiary is qualified to take the state licensing examination for physical therapists.

On appeal, the petitioner submits a statement and additional evidence.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. This section also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

In this case, the petitioner has filed an Immigrant Petition for Alien Worker (Form I-140) for classification under section 203(b)(3)(A)(i) of the Act as a skilled worker (physical therapist). Aliens who will be employed as physical therapists are listed on Schedule A. Schedule A is the list of occupations set forth at 20 C.F.R. § 656.10 with respect to which the Director of the United States Employment Service has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

An employer shall apply for a labor certification for a Schedule A occupation by filing an Application for Alien Employment Certification (Form ETA 750 at Part A) in duplicate with the appropriate Immigration and Naturalization Service office. The Application for Alien Employment Certification shall include:

1. Evidence of prearranged employment for the alien beneficiary by having an employer complete and sign the job offer description portion of the application form.
2. Evidence that notice of filing the Application for Alien Employment Certification was provided to the

bargaining representative or the employer's employees as prescribed in 20 C.F.R. § 656.20(g)(3).

In this case, Form I-140 was filed on April 20, 2001. On October 11, 2001, the director requested that the petitioner submit evidence that the beneficiary was qualified to take the State's written licensing examination for physical therapists.

In response, counsel submitted a copy of a letter from Health Professions Bureau in Indianapolis, Indiana, which stated that the beneficiary was eligible to take the National Physical Therapy Examination.

The director denied the petition, noting that "the evidence submitted does not include the beneficiary's state license, or a letter or statement provided by an authorized state physical therapy licensing official in the state of beneficiary's intended employment stating that the beneficiary is qualified to take that state's licensing examination for physical therapists."

On appeal, the petitioner resubmits the letter from Health Professions Bureau and argues that the petitioner complied with the director's request. The petitioner also submitted a copy of a Federation of State Boards of Physical Therapy (FSBPT) letter indicating that the beneficiary should schedule an appointment. It is not clear that this represents authorization from a California physical therapy licensing official.

Employment-based petitions are based on priority dates. The priority date in this case is established when the petition is properly filed with the Service. 8 C.F.R. § 204.5(d). The petition must be accompanied by the documents required by the particular section of the regulations under which it is submitted. 8 C.F.R. § 103.2(b).

The petition was not accompanied by evidence that the beneficiary qualifies for classification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I, at the time the petition was filed. As the petitioner had not complied with the instructions stipulated in the Department of Labor regulations, at the time of filing of the petition, the petition may not be approved.

Beyond the decision of the director, the record does not contain sufficient evidence of the petitioner's ability to pay the proffered wage. The petitioner submitted copies of bank statements and partial copies of tax returns.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant*

which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

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 met that burden. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.