

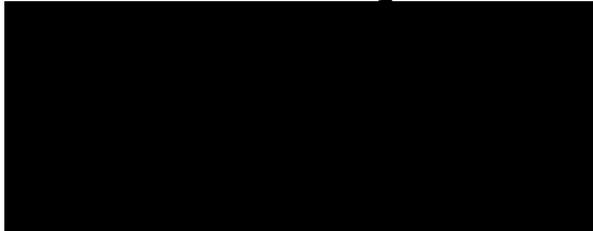


U.S. Citizenship
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FILE: WAC 03 269 50799 Office: CALIFORNIA SERVICE CENTER Date: FEB 16 2005

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a medical facility that seeks to employ the beneficiary as a medical research assistant. The petitioner, therefore, endeavors 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 because the beneficiary is not qualified to perform the duties of the proffered position. On appeal, counsel submits a brief.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a medical research assistant. The petitioner stated that the beneficiary is qualified for the proffered position based on his bachelor's degree in biology, Doctor of Medicine Degree, and work experience.

The director referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) to state that the beneficiary's duties are performed by physicians, an occupation that requires licensure. According to the director, the petitioner failed to establish that the beneficiary was qualified to perform the proffered position's duties because he did not possess proper licensure to practice as a physician in California.

Counsel states that the beneficiary is qualified for the proffered position. According to counsel, the beneficiary will primarily perform duties within a confined laboratory setting, and will not provide direct patient care. Counsel states that the beneficiary will work under the direct supervision of a medical doctor, and is not required to possess a medical license to perform the proffered position's duties.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the proffered position.

As already discussed, Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation.

According to the petitioner's letter dated July 21, 2003, the beneficiary would perform duties that entail reviewing and analyzing professional, scientific, and medical journals about health issues and developments to recommend tests and procedures that are relevant to diagnosis; performing comprehensive physical examinations of patients and compiling their medical data including their health history and results of the physical examination; assisting the medical doctor in minor surgical procedures for diagnostic purposes; performing phlebotomy, blood processing, and exercise stress tests; developing and implementing patient management plans, recording progress notes, and monitoring reactions to medication; instructing and counseling patients about prescribed therapeutic regimens, normal growth and development, and health maintenance; researching, analyzing, assessing, and investigating the safety and effects of medications and recommending the necessary dosage and/or treatment; and in partnership with the medical doctor, attending and participating in meetings and conferences held by pharmaceutical and research companies prior to the start of any research project.

The record of proceeding contains a letter dated November 17, 2003 from the Medical Board of California. This letter indicated that the Medical Board of California does not license or regulate medical research assistants; the letter stated:

In reviewing the duty statement attached to your correspondence, it appears that some of these responsibilities fall within the scope of the Medical Practice Act. I would suggest that you review these proposed responsibilities and activities in conjunction with Section 2052 of the Medical Practice Act of the Business and Professions Code.

The referenced section, Cal. Bus. & Prof. Code § 2052, provides:

- (a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.
- (b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.
- (c) The remedy provided in this section shall not preclude any other remedy provided by law.

The Medical Board of California indicated that some of the beneficiary's duties fall within the scope of the Medical Practice Act. These duties require a valid, unrevoked, or unsuspended certificate as stated by Cal. Bus. & Prof. Code § 2052. Consequently, the director properly determined that the proffered position requires licensure. Since counsel's December 2, 2003 letter indicated that the beneficiary does not hold a license to practice medicine in California, the beneficiary is not qualified to perform the proffered position.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.