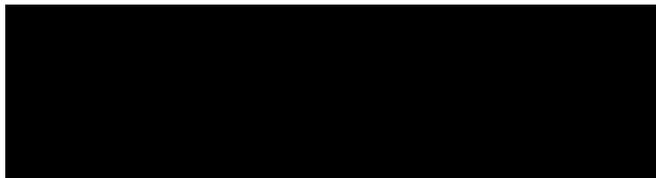


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FILE: WAC 04 240 53621 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

Michael T. Kelly
for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a public school district. It seeks to employ the petitioner in a teaching position, as an ESL (English as a Second Language)/Technology Trainer, and to classify her 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 on the ground that the beneficiary was not qualified to perform the services of a specialty occupation. In particular, the director found that the beneficiary did not meet the licensure requirement for H-1B classification set forth in section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184 (1)(2)(A), which provides that an alien seeking such classification must have “full state licensure to practice in the occupation, if such licensure is required to practice in the occupation.” The licensure requirement for H-1B classification is further specified by regulation at 8 C.F.R. § 214.2(h)(4)(v), which reads, in pertinent part, as follows:

- A. *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien . . . seeking H classification in that occupation must have that license prior to approval of the petition to be found eligible to enter the United States and immediately engage in employment in the occupation.
- B. *Temporary licensure*
- C. *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

Nevada, the state of intended employment, requires public school teachers to be licensed. The record indicates that the beneficiary did not have a teaching license from the State of Nevada, nor did she possess a temporary license, at the time the instant H-1B petition was filed on August 26, 2004. By decision dated September 21, 2004, therefore, the director denied the petition.

The petitioner filed a timely appeal in October 2004, asserting that the beneficiary had received her teaching license from the State of Nevada. A photocopy of the license was submitted showing that it was issued on September 24, 2004. That date was nearly a month after the H-1B petition was filed.

A petitioner must establish that it was eligible for the requested benefit at the time the petition was filed. See 8 C.F.R. § 103.2(b)(12). See also 8 C.F.R. § 214.2(h)(4)(iv)(A), which provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by:

. . . required evidence sufficient to establish that the beneficiary *is qualified* to perform services in a specialty occupation . . . and that the services the beneficiary is to perform are in a specialty occupation.” [Emphasis added.]

A visa petition may not be approved at a later date based on a set of facts not present at the time of filing. *See Matter of Michelin Tire Corporation*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

Since the instant H-1B petition was filed on August 26, 2004 and the petitioner did not receive a license to teach in the State of Nevada until September 24, 2004, the petitioner was not qualified to perform the services of the specialty occupation at the time of filing. The AAO concludes that the beneficiary is ineligible for H-1B classification pursuant to the instant petition.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.