

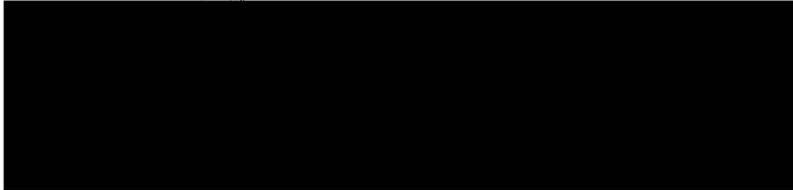
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U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 217 52476 Office: VERMONT SERVICE CENTER Date: JUN 23 2006

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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director 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 “healthcare professionals training, consulting, and service provider” that seeks to employ the beneficiary as a physical therapist. 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s two requests for additional evidence; (3) the petitioner’s responses to the director’s requests for evidence; (4) the director’s denial letter; and (5) the Form I-290B and supporting documentation, and the petitioner’s two supplemental submissions. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the basis that the petitioner had failed to establish that the beneficiary is qualified to perform the duties of this specialty occupation.¹ Specifically, the director found the petitioner in noncompliance with Section 212(a)(5)(C) of the Act, 8 U.S.C. § 1182(a)(5)(C), which requires that certain healthcare workers obtain a certificate that (1) verifies that the alien’s education, training, licensure, and experience meet all applicable statutory and regulatory requirements for entry into the United States under the requested classification, are comparable to those required for American healthcare workers of the same type, and are authentic; (2) that the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate to the type of healthcare work in which the alien will be engaged; and (3) if a majority of states licensing the profession in which the alien intends to work recognize a test predicting the success on the profession’s licensing or certification examination, that the alien has passed such a test or such an examination.

In a September 22, 2003 memorandum,² Citizenship and Immigration Services (CIS) noted that, in the case of physical therapists, two organizations are authorized to issue these certificates: (1) the Commission on Graduates of Foreign Nursing Schools (CGFNS) and (2) the Foreign Credentialing Commission on Physical Therapy (FCCPT).

Accordingly, the director requested such a certificate in his October 4, 2004 request for additional evidence. In response, the petitioner submitted a “Report of Evaluation of Educational Credentials,” dated April 27, 2001, issued by International Consultants of Delaware, Inc (ICD). The record also contains a letter from the New Jersey State Board of Physical Therapy, dated September 12, 2002, which states that the beneficiary is eligible to sit for the National Physical Therapy Examination.

The director denied the petition, noting that the petitioner had failed to submit the certificate from CGFNS or FCCPT required by Section 212(a)(5)(C) of the Act.

¹ The AAO accepts the proposition that the proposed position, a physical therapist, qualifies for classification as a specialty occupation.

² Memorandum from [REDACTED] Associate Director for Operations, Citizenship and Immigration Services, Department of Homeland Security, *Final Regulation on Certification of Foreign Health Care Workers: Adjudicator’s Field Manual Update AD 03-31* (September 22, 2003).

The record contains three letters that the petitioner has submitted in support of its appeal. The first, dated November 19, 2004, states that since the petitioner is a New Jersey entity, it must [obtain credentials evaluations] from the credentials evaluation company authorized by the New Jersey Attorney General, and that ICD is one such company.

However, this letter does not address the basis of the director's denial. The petition was not denied based on the ICD credentials evaluation; the AAO has no reason to doubt the veracity of that document. The petition was denied because the petitioner did not submit the certificate mandated by Section 212(a)(5)(C) of the Act.

Moreover, the companies authorized by the New Jersey Attorney General to issue credentials evaluations are irrelevant here, as the petitioner is applying for an immigration benefit from CIS. In order to receive the benefit sought, the petitioner must satisfy the Immigration and Nationality Act and its implementing regulations. The fact that New Jersey requires a credentials evaluation from ICD does not relieve the petitioner from its burden of proof under the Immigration and Nationality Act.

The petitioner's second letter in support of the appeal, dated February 15, 2005 states that ICD is a division of CFGNS and contains evidence to support this assertion. The petitioner also submitted another copy of the April 27, 2001 ICD evaluation.

However, this submission did not address the basis of the director's denial, either. As noted previously, the AAO has no reason to question the veracity of the ICD evaluation. Nor does the AAO question whether ICD is a division of CGFNS; a review of the CGFNS website reveals that ICD was indeed acquired by CGFNS in 2000.³ The petitioner again failed to satisfy Section 212(a)(5)(C) of the Act with this submission.

The petitioner's third letter in support of the appeal, dated March 10, 2005, contained additional evidence that ICD is a division of CGFNS, another copy of the April 27, 2001 ICD evaluation, evidence that the beneficiary has passed the National Physical Therapist/Physical Therapist Assistant Examination, as well as copies of other documents previously submitted.

However, this submission did not address the basis of the director's denial, either, and the petitioner failed again to satisfy Section 212(a)(5)(C) of the Act.

The petitioner has misunderstood the basis of the denial. CIS did not deny the petition because it doubted the veracity of the ICD evaluation or questioned whether ICD is a division of CGFNS. Rather, the petition was denied because the ICD evaluation does not satisfy Section 212(a)(5)(C) of the Act; it is not the type of "certificate" to which the statute refers. The evidence that the certificate must contain was cited previously, and the ICD evaluation submitted by the petitioner does not contain all the required information. For example, the ICD evaluation does not address the beneficiary's competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate to the type of healthcare work in which the beneficiary will be engaged.

The AAO notes that CGFNS does issue the certificate required by the Act; information regarding the "VisaScreen" certificate may be found on its website. However, the credentials evaluations issued by ICD and contained in this record do not meet the requirements of Section 212(a)(5)(C) of the Act.

³ See <http://www.cgfns.org/sections/prog/intl-delaware.shtml> (visited May 30, 2006).

Accordingly, the petitioner has not demonstrated that the beneficiary qualifies to perform the duties of this specialty occupation.

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.