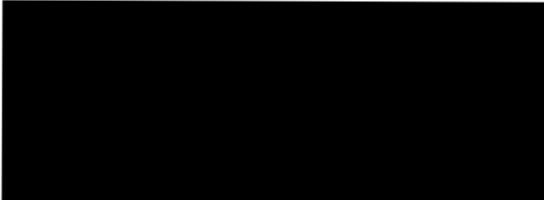


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U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 04 085 50588 Office: NEBRASKA SERVICE CENTER Date: MAR 06 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:



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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration.

The petitioner is a physical therapy and rehabilitation provider that seeks to employ the beneficiary as a staff educator/in-service coordinator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence including documentation related to the educational levels of the petitioner's employees.

Section 214(i)(I) of the Act, 8 U.S.C. § 1184(i)(I), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (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 staff educator/in-service coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 26, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: assessing, developing, implementing, and monitoring a complete plan of educational development and continuing education to the staff. The petitioner indicated that the beneficiary is a qualified candidate for the job because she possesses a bachelor's degree in physical therapy.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a bachelor's degree. The director found further that, without information regarding the educational levels of the petitioner's employees, it could not be determined whether the proffered position is a specialty occupation. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the job duties of the proffered position are so complex as to require a bachelor's degree in physical therapy. Counsel states further that all of the petitioner's physical therapists possess a bachelor's degree in the rehabilitation field. Counsel submits a letter from a similar facility to show that this requirement is industry wide.

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this case, the petitioner is seeking the beneficiary's services as a staff educator/in-service coordinator.

Section 17801(1)(b) of the Michigan Public Health Code, Act 368 of 1978, defines the "practice of physical therapy" as:

[T]he evaluation of, education of, consultation with, or treatment of an individual by the employment of effective properties of physical measures and the use of therapeutic exercises and rehabilitative procedures, with or without assistive devices, for the purpose of preventing, correcting, or alleviating a physical or mental disability. It includes treatment planning, performance of tests and measurements, interpretation of referrals, initiation of referrals, *instruction, consultative services*, and supervision of personnel. . . . (Emphasis added.)

Section 17820 of the Michigan Public Health Code, Act 368 of 1978, states:

A person shall not engage in the practice of physical therapy unless licensed or otherwise authorized by this article. . . .

In view of the foregoing, the proffered position entails the practice of physical therapy and is thus similar to that of a physical therapist. In its *Occupational Outlook Handbook (Handbook)*, 2006-2007 edition, the Department of Labor finds that all states require physical therapists to pass a licensure exam before they can practice, after graduating from an accredited physical therapist educational program. Accordingly, the petitioner has overcome the grounds upon which the director denied the petition. The proffered position is a specialty occupation.

The petition may not be approved, however, because the director has not determined whether the beneficiary is qualified to perform the services of a specialty occupation. In this case, the beneficiary holds a bachelor's degree in physical therapy conferred by a Filipino institution. An evaluator from a company that specializes in

evaluating academic credentials concluded that the beneficiary possesses the equivalent of a bachelor's degree in physical therapy awarded by an accredited U.S. college or university. The record, however, does not contain evidence that the beneficiary holds the required license from the State of Michigan. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the proffered position, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's July 29, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.