

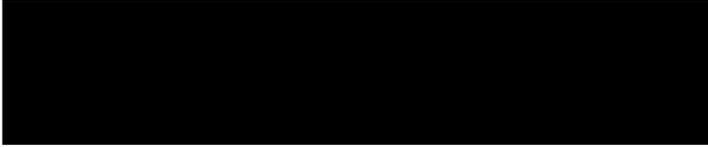
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**U.S. Citizenship  
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FILE: WAC 05 258 52609 Office: CALIFORNIA SERVICE CENTER Date: **AUG 06 2007**

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.

*for Michael T. Kelly*  
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 The director's decision will be withdrawn and the matter remanded to the director for entry of a new decision.

The petitioner is a general nursing and rehabilitation services center that seeks to employ the beneficiary as a psychiatric rehabilitation counselor. 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 on the basis of his determination that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. Specifically, the director found that the petitioner had failed to demonstrate that the beneficiary is not required to possess licensure in order to perform the duties proposed for him.

The record of proceeding before the AAO contains (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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.

In his December 6, 2005 request for additional evidence, the director requested evidence that the beneficiary possessed licensure as a psychiatric rehabilitation counselor. In the alternative, the petitioner was to provide a letter from the appropriate state licensing authority confirming that licensure was not required.

In its response to the director's request for evidence, which was received at the service center on February 8, 2006, the petitioner provided neither of the requested items. Rather, it simply stated its own policy of not requiring licensure. Accordingly, the petitioner did not respond to the director's request.

In his February 22, 2006 denial, the director looked to the 2006-2007 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource CIS routinely consults for its information about the duties and educational requirements of particular occupations. At page 190, the *Handbook* states the following with regard to the licensure of counselors:

For counselors based outside of schools, 48 States and the District of Columbia have some form of counselor licensure that governs their practice of counseling.

Citing to this passage, the director denied the petition, finding the beneficiary unqualified to perform the duties of the proposed position.

On appeal, the petitioner repeats its earlier assertion that it does not require licensure for the proposed position. Accordingly, the petitioner's submission does not overcome the basis of the director's denial.

However, the AAO has looked beyond the petitioner's submission and determined that the proposed position does not require licensure by the State of California. First, the AAO notes that the California Labor Market Information Service makes no mention of licensure in its "Entrance Requirements and Training" portion of its entry for rehabilitation and school counselors.<sup>1</sup> Moreover, the AAO notes that there is presently a bill in the California State Senate that would, for the first time, require professional counselors to obtain licensure prior to practicing their profession.<sup>2</sup> According to the website of the California Coalition for Counselor Licensure, an organization advocating in favor of this bill, California and Nevada are the only two states in the United States that do not require professional counselors to be licensed.<sup>3</sup>

Accordingly, the AAO finds that, while the *Handbook* states that 48 states require licensure, California is one of the two states (Nevada being the other) that do not require such licensure. As such, the beneficiary is not required to possess licensure in order to perform the duties of the proposed position, and the portion of the director's decision to the contrary is withdrawn.

However, the beneficiary still does not qualify to perform the duties of a psychiatric rehabilitation coordinator. According to the *Handbook*, at page 190, a bachelor's degree often qualifies an individual to work as a counseling aide, rehabilitation aide, or social service worker. However, the position proposed in this petition is not that of a counseling aide, rehabilitation aide, or social service worker. Also, the aforementioned website of the California Labor Market Information Service<sup>4</sup> states that, while government agencies will accept a bachelor's degree with related work experience, rehabilitation counselors in the private sector need a master's degree or to be enrolled in a master's degree program. The record, however, does not establish that the beneficiary possesses a master's degree or was enrolled in a master's degree program at the time the petition was filed.

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<sup>1</sup> See <http://www.calmis.ca.gov/file/occguide/counslr.htm> (accessed July 12, 2007).

<sup>2</sup> See [http://info.sen.ca.gov/pub/07-08/bill/asm/ab\\_1451-1500/ab\\_1486\\_cfa\\_20070416\\_100952\\_asm\\_comm.html](http://info.sen.ca.gov/pub/07-08/bill/asm/ab_1451-1500/ab_1486_cfa_20070416_100952_asm_comm.html) (accessed July 12, 2007). This bill to require licensure was introduced on April 16, 2007. As of July 12, 2007, it had not passed both houses of the legislature. As such, at the time of adjudication licensure was not required.

<sup>3</sup> See <http://www.caccl.org/faq.html> (accessed July 12, 2007).

<sup>4</sup> *Id.*

Accordingly, the record does not establish that the beneficiary qualifies to perform the duties of the proposed position, and the petition may not be approved. However, as the AAO has found the beneficiary unqualified to perform the duties of the proposed position on grounds different from those relied upon by the director, the petition must be remanded to the director for entry of a new decision. Specifically, the director must afford the petitioner the opportunity to establish that the beneficiary possesses a master's degree, or was enrolled in a master's degree program at the time the petition was filed. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the proposed position. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's February 22, 2006 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.