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U.S. Citizenship
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Services

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[Redacted]

FILE: WAC 06 257 53151 Office: CALIFORNIA SERVICE CENTER Date: DEC 26 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:
[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a public county school system in the State of Maryland. It seeks to employ the beneficiary as a middle school science teacher. Accordingly, the petitioner endeavors to classify the beneficiary as a temporary nonimmigrant worker 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 filed August 17, 2006 with supporting documentation; (2) the director's October 12, 2006 request for further evidence (RFE); (3) counsel's December 26, 2006 response to the director's RFE; (4) the director's January 9, 2007 denial decision; and (5) the Form I-290B, counsel's brief, and a copy of the Maryland Educator Certificate issued to the beneficiary, valid from July 1, 2006 through June 30, 2011, that was received October 2, 2007 in the office of the AAO. The AAO reviewed the record in its entirety before issuing its decision.

On January 9, 2007, the director denied the petition, determining that the petitioner had not provided evidence that the State of Maryland had issued a teaching certificate to the beneficiary; thus the petitioner had not established that the beneficiary possessed the appropriate licensure as required by the proffered position or had proven an exemption or exception from said requirement.

On appeal, counsel for the petitioner notes that the beneficiary's Maryland license was still being processed when he responded to the RFE and still had not been received when he submitted the brief on appeal. Counsel asserts that the director should have exercised his discretion to approve this matter based on the petitioner's review of the beneficiary's credentials, the petitioner's certification that the beneficiary was eligible to receive a license, and the petitioner's experience regarding the granting of licenses in the State of Maryland. Counsel references the Maryland State Department of Education website that provides information regarding the issuance of licenses. Subsequent to the submission of counsel's brief, the AAO received a copy of the Maryland Educator Certificate issued to the beneficiary showing the validity of the beneficiary's license from July 1, 2006 to June 30, 2011.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The Form ETA 9035E, Labor Condition Application (LCA) indicates that the petitioner plans to employ the beneficiary in Upper Marlboro, Maryland. Thus, it is necessary to review the Maryland laws and regulations governing the issuance of educator licenses or certificate. In this matter, counsel for the petitioner provides evidence on appeal that the beneficiary had a public school teaching certificate issued by the State of New York.

The Maryland State Department of Education website at www.marylandpublicschools.org provides the following information for applicants seeking a Maryland State teaching license who request reciprocity for an out-of-state teaching certificate:

Step 1.

You must hold a valid (current) professional certificate from another state, completed an out-of-state approved program, and have met the issuing state's qualifying scores required for the professional certificate.

Step 2.

To request your initial Maryland certificate by mail, submit the following:

- Official transcript(s) in an unopened mailer for all course work taken (community college, baccalaureate, post-baccalaureate, if applicable). Your transcript must show the degree and date of conferral. Student copies in an unopened mailer are also acceptable.
- A photocopy of your valid out-of-state professional certificate;
- Verification of test scores for the required teacher certification tests for your out-of-state professional certificate. (A photocopy of the test scores or an official verification from a state department of education will be accepted.); and
- A cover letter with your name, complete mailing address, social security number, and the area of certification you are seeking. Day time telephone number and personal e-mail address are encouraged.

The AAO acknowledges the petitioner's submission of the beneficiary's license to teach in the State of New York on appeal. However, this information was not before the director when the director entered his decision. Moreover, although the petitioner submitted the beneficiary's New York State license on appeal, the petitioner did not submit evidence that the beneficiary had complied with all the necessary steps to obtain a Maryland State license when the appeal was filed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record on appeal contains evidence that the beneficiary obtained a Maryland State license to teach in the State of Maryland, and that the license is valid from July 1, 2006; thus the beneficiary is eligible to practice teaching in the State of Maryland, at the work location specified on the LCA, when the petition was filed. For this reason, the director's decision is withdrawn and the petition will be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The petition is approved.