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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

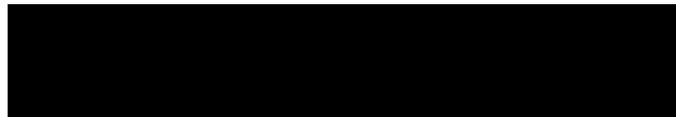
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FILE: SRC 05 192 51636 Office: TEXAS SERVICE CENTER Date: FEB 26 2007

IN RE: Petitioner:
Beneficiary:



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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The Form I-129 indicates that the petitioner is a chiropractic, physiotherapy, and rehabilitation clinic with four employees. The petitioner seeks to employ the beneficiary as a physiotherapist. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the June 27, 2005 Form I-129 and supporting documentation; (2) the director's August 13, 2005 request for further evidence (RFE); (3) the petitioner's September 28, 2005 response to the director's RFE; (4) the director's November 17, 2005 denial letter; and (5) the Form I-290B, with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The AAO observes that the beneficiary signed the Form G-28, Notice of Entry of Appearance as Attorney or Representative, indicating counsel as her representative. The record does not contain a Form G-28 signed by the petitioner. The beneficiary is not the affected party in these proceedings and has no standing to appeal the decision denying the petition. Section 103.3(a)(1)(iii)(B) defines an affected party in these proceedings as: ". . . affected party (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition." Thus, the regulations mandate the rejection of the appeal.

Of note, the beneficiary's massage therapist's license has been submitted on appeal. The AAO observes that the beneficiary's massage therapist license was not issued until September 24, 2005, some three months after the petition was filed. Thus, the beneficiary was not eligible to perform the duties of a massage therapist when the petition was filed, even if such a position could be construed to be that of a specialty occupation.

The petition will be denied and the appeal dismissed for the above stated reason. As always, 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 met that burden.

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