

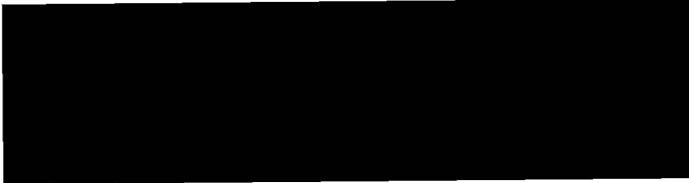
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FILE: WAC 06 110 52718 Office: CALIFORNIA SERVICE CENTER Date: **JUN 02 2008**

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:



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*  
Robert P. Wiemann, Chief  
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 appeal will be dismissed. The petition will be denied.

The petitioner provides home care assistance for senior citizens and seeks to employ the beneficiary as a case worker. The petitioner 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 because the beneficiary did not have a license to perform social work in California and was, accordingly, not qualified to perform the services of the offered specialty occupation. On appeal, counsel submits a brief and additional information stating that the petitioner is qualified to perform the duties of the proffered position, and that the position does not require a license in California.

The director also determined that an extension of stay could not be granted because the petitioner failed to establish that the beneficiary was in status at the time the petition was filed. This issue is not within the AAO's jurisdiction. *See* 8 C.F.R. § 214.1(c)(5).

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

As previously stated, the director denied the petition because the beneficiary is not licensed to work as a social worker in California. Thus, it is implicit in the director's decision that the proffered position qualifies as a specialty occupation. The AAO agrees. The Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that a bachelor's degree in social work is the most common minimum requirement to qualify for a job as a social worker; however, majors in psychology, sociology, and related fields may qualify for some entry-level jobs, especially in small community agencies. Although a bachelor's degree is sufficient for entry into the field, an advanced degree has become the standard for many positions. A master's degree in social work is typically required for positions in health settings and is required for clinical work as well. The *Handbook* further notes that all States and the District of Columbia have licensing, certification, or

registration requirements regarding social work practice and the use of professional titles. The offered position qualifies as a specialty occupation.

The issue before the AAO is whether the beneficiary is qualified to perform the duties of a social worker in the petitioner's business environment. The petitioner states that a license is not required to perform the duties of the proffered position, and that the beneficiary is otherwise qualified. The AAO does not agree.

While all social workers need not be licensed in California, those providing clinical social work are required to be licensed. Clinical social work is defined by section 4996.9 of the California Business and Professions Code as follows:

4996.9. The practice of clinical social work is defined as a service in which a special knowledge of social resources, human capabilities, and the part that unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive social adjustments. The application of social work principles and methods includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with individuals, families, or groups; providing information and referral services; providing or arranging for the provision of social services; explaining or interpreting the psychosocial aspects in the situations of individuals, families, or groups; helping communities to organize, to provide, or to improve social or health services; or doing research related to social work.

Psychotherapy, within the meaning of this chapter, is the use of psychosocial methods within a professional relationship, to assist the person or persons to achieve a better psychosocial adaptation, to acquire greater human realization of psychosocial potential and adaptation, to modify internal and external conditions which affect individuals, groups, or communities in respect to behavior, emotions, and thinking, in respect to their intrapersonal and interpersonal processes.

Section 4996(b) of the California Business and Professions Code states that it is unlawful for any person to engage in the practice of clinical social work unless at the time of so doing they hold a valid, unexpired, and unrevoked license. The petitioner described the duties to be performed by the beneficiary in response to the director's request for evidence. According to the evidence the beneficiary would:

- Evaluate prospective clients to determine their physical and mental condition to establish a treatment plan;
- Interview clients to determine whether they are physically and mentally capable of taking care of themselves;
- Encourage clients' participation in activities to the extent to which the client is able;
- Establish preventive programs to avoid any potential health problems of clients and make timely contact with medical professionals if necessary;
- Help clients change their pattern of behavior and attitudes by understanding their problems;
- Aid clients in dealing with their personal problems such as aging, physical and mental impairment, health

and loneliness;

- Hold conferences and meet with clients' families to aid family members in understanding , accepting and accommodating clients' needs, concerns and problems and provide information to maintain a healthy environment for clients;
- Compile records, prepare reports and maintain appropriate documentation on clients' needs, concerns, progress, and problems on all services performed as per agency policy and procedure;
- Comply with state regulatory acts;
- Maintain a clean, safe and healthy environment;
- Conduct herself in a safe and professional manner at all times and in all situations; and
- Maintain client confidentiality at all times as outlined by HIPPA, state, federal, KCAHO and agency policies.

As generally stated in the record as they are, the first eight of the duty bullet-descriptions appear to include the practice of clinical social work as described at Section 4996.9 of the California Business and Professions Code.

The petitioner states that a license is not required by operation of Section 4996.13 of the California Business and Professions Code, which states as follows:

4996.13. Nothing in this article shall prevent qualified members of other professional groups from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions. However, they shall not hold themselves out to the public by any title or description of services incorporating the words psychosocial, or clinical social worker, or that they shall not state or imply that they are licensed to practice clinical social work. These qualified members of other professional groups include, but are not limited to, the following:

- (a) A physician and surgeon certified pursuant to Chapter 5 (commencing with Section 2000);
- (b) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900);
- (c) Members of the State Bar of California;
- (d) Marriage and family therapists licensed pursuant to Chapter 13 (commencing with Section 4980); and
- (e) A priest, rabbi, or minister of the gospel of any religious denomination.

The petitioner is a private home health agency providing services for senior citizens. The petitioner presents no evidence that the beneficiary is a qualified member of one of the "other professional groups" referenced above and that the beneficiary's work would be restricted to the scope of work of such professional group.

Counsel's contention that the proffered position does not require licensure is not persuasive. The AAO notes in particular that the record of proceedings contains no supportive evidence from the California authority governing clinical social workers, the California Board of Behavioral Sciences, whose Internet site is <http://www.bbs.ca.gov>. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel errs to the extent that he relies upon Section 4996.14 of the California Business and Professions Code, as the record of proceedings does not establish that the beneficiary would be employed as described in this section's subparagraphs identifying the types of employment for which activities of a psychosocial nature are not restricted.

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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.