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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: LIN 99 184 51797 Office: Nebraska Service Center

Date: JUL 16 2001

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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

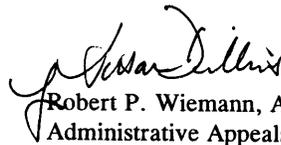
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a rehabilitation services and staffing firm which seeks to employ the beneficiary as a staff physical therapist for a period of three years. The director denied the petition because the petitioner failed to provide the beneficiary's New York State license to practice physical therapy.

On appeal, the petitioner has now provided the license. Although evidence was submitted on appeal, the petitioner had indicated a brief would be submitted in support of the appeal. In order to ensure fair consideration of all available material, the petitioner was afforded an opportunity to furnish a brief or any additional material. To date, no brief or further evidence has been entered into the record of proceeding.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

8 C.F.R. 214.2(h)(4)(v)(A) provides that if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1A nurse) seeking H classification in that occupation must have that license prior to approval of the visa petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

The petitioner did not initially provide the beneficiary's license to practice physical therapy. On September 30, 1999, the petitioner was requested by the director to provide the beneficiary's New York

State license to practice physical therapy. The petitioner did not submit the license.

Counsel has now submitted the license. However, the petition may not be approved. Pursuant to 8 C.F.R. 103.2(b)(12):

An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application was filed.

In addition, the license was issued on November 18, 1999, a date subsequent to June 14, 1999, the filing date of the visa petition. In view of the foregoing, it is concluded that the petition may not be approved.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.