



U.S. Department of Justice  
Immigration and Naturalization Service

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

[REDACTED] copy

File: SRC-99-049-50746

Office: Texas Service Center

Date: OCT 25 2001

IN RE: Petitioner:  
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:

[REDACTED]

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 sports rehabilitation and training center with three to six employees and a projected gross annual income of \$300,000. It seeks to employ the beneficiary as a clinical services manager for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief.

The director denied the petition because the record contains no evidence that the beneficiary holds the equivalent of a baccalaureate degree conferred by a U.S. accredited institution, or that the beneficiary holds a license, registration or certification. On appeal, counsel states in part that the record contains two evaluations demonstrating that the beneficiary holds the equivalent of a baccalaureate degree in physical therapy.

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.

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.

The beneficiary holds a certificate in physiotherapy issued by a Finnish institution. The beneficiary also had 11 years of relevant employment at the time of the filing of the present petition. A credentials evaluation service found the beneficiary's foreign education and employment experiences equivalent to a baccalaureate degree in physical therapy from an accredited college or university in the U.S. The record also contains a second evaluation as corroborating evidence to support the finding 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. The evaluations appear reasonable and will be accepted.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to combine the duties of a health services manager with those of a physical therapist. It cannot be concluded, however, that the beneficiary qualifies to perform the duties of the proffered position as the record contains no evidence that the beneficiary is licensed to practice as a physical therapist in the U.S. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, finds that all states require physical therapists to pass a licensure exam after graduating from an accredited physical therapist educational program before they can practice. Although the petitioner argues that a local license is not required for the beneficiary as her proposed duties are managerial and therefore do not require direct patient contact, treatment, or assessment, some of the proposed duties and the duties described for physical therapists in the Handbook at page 206 appear to overlap. For example, the beneficiary's proposed duties include "establishing and developing treatment guidelines and protocols...", "consulting with the professional staff on

individual cases to ensure that the case is managed properly and in accordance with Center and established protocols for the particular injury, "treatment or therapy prescribed", and "...review all patient files for quality of care, patient results and outcomes." A review the Handbook at page 206 finds the following duties for a physical therapist position:

Therapists examine patients' medical histories...they develop treatment plans describing a treatment strategy, the purpose, and anticipated outcome...[they] often consult and practice with a variety of other professionals...

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

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.