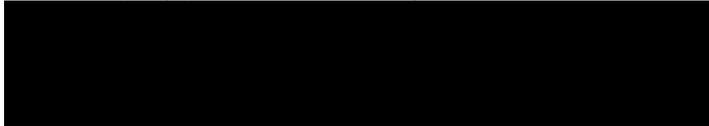




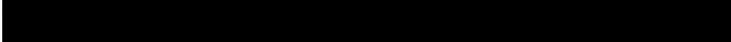
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



FILE: LIN 02 192 52189 Office: NEBRASKA SERVICE CENTER Date: **APR 14 2004**

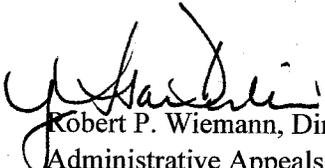
IN RE: Petitioner: 
Beneficiary: 

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, Director
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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner operates a rehabilitation facility. It seeks to employ the beneficiary as a case management coordinator, and to classify her 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 I-129 petition stating that the beneficiary did not qualify to perform the duties of a specialty occupation. In doing so, the director cited regulations pertaining to a beneficiary's qualifications. The director's decision, however, did not discuss the beneficiary's qualifications in any manner. His analysis and discussion was totally dedicated to whether the proffered position qualified as a specialty occupation, with the director ultimately stating that "the Service cannot conclude that a baccalaureate degree in physical therapy is the minimum requirement for entry into this profession within the industry." That statement was immediately followed by the director's holding: "Therefore, the petitioner has failed to establish that the beneficiary qualifies to perform services in a specialty occupation."

The director's ultimate decision is inconsistent with the analysis set forth in his decision. In fact, the ultimate decision and case analysis are unrelated. As such, this matter must be remanded to the director to issue a new decision. The director shall first determine whether the proffered position qualifies as a specialty occupation. If the director determines that the position does so qualify, he shall then determine whether the beneficiary qualifies to perform the duties of a specialty occupation. The director may obtain such additional evidence as he deems necessary in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion.