U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 03 069 52030 Office: VERMONT SERVICE CENTER Date: AUG 1 6 2006

IN RE: Petitioner: [redacted]
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.

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 appeal will be dismissed. The petition will be denied.

The petitioner is a manpower resources company that seeks to employ the beneficiary as a physical therapist. 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 is not qualified to perform the duties of a specialty occupation. In particular, the beneficiary does not have a license to practice physical therapy in the State of New Jersey.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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, an 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 record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a physical therapist. The petitioner indicated in a December 23, 2002 letter that it wished to hire the beneficiary because she possessed a bachelor's degree in physical therapy and a physical therapy license from her home country.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary did not possess a valid license to practice physical therapy in the State of New Jersey. The regulations state at 8 C.F.R. § 214.2(h)(4)(v)(A):

> 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-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a license in the State of New Jersey.

On appeal, the petitioner states that it had submitted documentation in response to the director's request for evidence establishing that the beneficiary was eligible for a temporary license to practice physical therapy. The petition was filed on January 2, 2003. The petitioner's response to the director's request for evidence was filed on April 28, 2003, along with a letter from the New Jersey State Board of Physical Therapy. The letter stated that the beneficiary had met the requirements for licensure by examination, and that she was eligible to sit for the National Physical Therapy Examination (NPTE). The letter also stated, however, that on February 13, 2003, the Governor of New Jersey signed into law a new statute disallowing any kind of temporary license to practice physical therapy. Therefore, the beneficiary must pass the NPTE and receive a valid social security number prior to receiving a license to practice physical therapy.

The petitioner asserts that since temporary licenses were available at the time the petition was filed, it should not be penalized because a subsequent law makes them no longer available. A beneficiary must be eligible to engage in a specialty occupation upon arrival in the United States, not at some later date. 8 C.F.R. § 214.2(h)(4)(v)(A). The petitioner did not provide any evidence to establish that the beneficiary would be able to practice as a physical therapist in New Jersey upon her arrival, nor that the statute allows any kind of grandfathering in of those who might have been eligible for a temporary license prior to February 13, 2003. Since the state where the beneficiary would be employed no longer allows temporary licenses, the beneficiary must pass the NPTE prior to approval of a petition. At that point, she could receive a visa and then apply for a social security number upon arrival. CIS's policy is to approve an H-1B nonimmigrant worker petition filed on behalf of an alien whose <u>only</u> impediment to licensure is that he or she does not have a social security number; in this instance, the beneficiary has not taken and passed the exam required to practice in the State of New Jersey.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.

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