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**U.S. Citizenship  
and Immigration  
Services**



DZ

FILE: LIN 03 113 51908 Office: NEBRASKA SERVICE CENTER Date JUN 02 2004

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)

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.

*Mari Johnson*

*fw* 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 health care services staffing agency. It seeks to employ the beneficiary as a physical therapist. The petitioner, therefore, 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 the proper licensure to perform the duties of the proffered position. On appeal, the petitioner states that the beneficiary is still eligible to take the examination for permanent licensure as a physical therapist.

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.

With regard to temporary licensure, 8 C.F.R. § 214.2(h)(4)(v)(B) states the following:

[I]f a temporary licensure is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's denial letter dated May 27, 2003; and (3) 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. In its petition, it submitted a copy of a temporary physical therapist license for the beneficiary that was issued on December 9, 2002 and that expired on March 9, 2003. This document states that the temporary license expires on the date indicated on the form, or when the applicant becomes licensed, or when the application for licensure is denied, or upon failure of the licensing examination. The license also states that the beneficiary is granted a license to practice under the direct supervision of a physical therapist or physician. In its letter of support, the petitioner stated the following with regard to the beneficiary's temporary licensure:

The job description of a temporary licensed therapist is the same as the duties that is normally performed by a licensed therapist. Provided that his work will be co-signed by the licensed therapist, he can fully function as [a licensed physical therapist]. Upon supervision of a licensed therapist, he can provide therapy as prescribed by the physician, write plan[s] of care, receive and assess patients, and monitor patient's progress and response to treatments.

The director's denial of the petition is dated May 27, 2003. In his decision, the director found that the beneficiary was not qualified for the proffered position because the beneficiary's temporary license had expired on March 9, 2003 since there was no evidence in the record that the beneficiary had ever received his permanent physical therapist license. On appeal, the petitioner states that the petition was filed while the beneficiary's temporary license was still valid. The petitioner also states that the beneficiary is still eligible to take the permanent licensure examination for physical therapist. The petitioner provides no further documentary evidence that the beneficiary had taken and passed the examination for permanent licensing as a physical therapist prior to the expiration of the temporary license.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to immediately engage in the duties of a physical therapist. As correctly noted by the director, the petitioner did not provide any evidence that prior to March 9, 2003, the beneficiary had taken and passed the examination for permanent licensure as a physical therapist. Without such documentation, based on the explanation provided on the beneficiary's temporary license, his temporary license would have expired on March 9, 2003.

While the petitioner has provided an educational equivalency document that establishes the beneficiary's degree in physical therapy based on five years of university studies is the equivalent of a baccalaureate degree in physical therapy from an accredited U.S. university, the petitioner has not provided sufficient documentation with regard to the beneficiary's required licensure. Without the requisite license, the beneficiary is not qualified to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment. Although the petitioner claims the beneficiary could work as a physical therapist under the supervision of another licensed physical therapist, the petitioner is a staffing agency in Missouri. There is no evidence that the petitioner has direct knowledge that the beneficiary will actually be under the supervision of another licensed physical therapist, while working in Indiana.

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.

Beyond the decision of the director, although the petitioner states that it is the actual employer of the beneficiary, the record does not sufficiently establish this fact. For example, the beneficiary's place of employment on the Labor Condition Application (LCA) is listed as Fort Wayne, Indiana. Furthermore, while the petitioner's corporate office appears to be in Springfield, Missouri, the beneficiary received temporary licensing as a physical therapist from the State of Indiana. The record currently contains no agency service agreement between the petitioner and a client that provides a comprehensive description of the beneficiary's proposed duties from a client's authorized representative. Without such a description, the petitioner has not demonstrated that the work that the beneficiary will perform qualifies as a specialty occupation. For this additional reason, the petition may not be approved.

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