



U.S. Citizenship
and Immigration
Services



FILE: WAC 02 253 52144 Office: CALIFORNIA SERVICE CENTER Date: 02/19/04

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:
[Redacted]

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
for Robert P. Wiemann, Director
Administrative Appeals Office

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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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a professional rehabilitation corporation that seeks to employ the beneficiary as an occupational 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 had already spent six years in the United States in an H-1B classification. On appeal, the counsel submits a statement.

Pursuant to Section 11030A of Public Law 107-273, the 21st Century Department of Justice Appropriations Authorization Act, H-1B nonimmigrants may be exempt from the six-year limitation if 365 days or more have passed since a labor certification application was filed, or since an employment based immigrant petition was filed.

On appeal, counsel submits evidence showing that the beneficiary had a labor certification pending for longer than 365 days at the time of filing, and that he is, therefore, eligible for an exemption to the six-year limitation.

The petition is otherwise approvable, as the proffered position meets the terms of a specialty occupation and the beneficiary is qualified to perform a specialty occupation.

Nevertheless, the petition may not be approved at the present time. The beneficiary's license expired on January 31, 2004. The director must afford the petitioner reasonable time to provide evidence that the beneficiary possesses a current license to practice as an occupational therapist. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's May 20, 2003 decision is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision.