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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

DA



FILE: LIN 03 182 50949 Office: NEBRASKA SERVICE CENTER Date: JUN 30 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

to 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 summarily dismissed.

The petitioner is a provider of rehabilitation services and staffing 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 on the basis that the beneficiary does not hold the license necessary to perform the duties of the proffered position, and because the Labor Condition Application for H-1B Nonimmigrants (LCA), Form ETA 9035, was not valid for the intended place of employment.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

The petitioner submitted a timely Form I-290B on August 28, 2003, and attached a very brief statement in which the petitioner acknowledges that the beneficiary's license has expired. The petitioner states that the beneficiary is eligible to take the examination required for licensure. This explanation does not specify how the director made any erroneous conclusion of law or statement of fact in denying the petition.

The petitioner also submits a Form ETA 9035 valid for the intended place of employment, but approved after the petition was filed. The petitioner, however, must obtain the LCA in the specialty occupation certified by the United States Department of Labor prior to the filing of a petition, per 8 C.F.R. § 214.2(h)(4)(i)(B). The present petition was filed May 19, 2003, while the LCA submitted on appeal was certified by the Department of Labor on August 15, 2003. Consequently, the petitioner did not provide evidence of a timely certified LCA valid for the intended place of employment.

As the petitioner fails to present additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding 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.