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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 02 170 54261 Office: TEXAS SERVICE CENTER Date: MAR 15 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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, 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 medical clinic that seeks to employ the beneficiary as a quality improvement manager. 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 evidence of record had not established that the beneficiary was qualified to serve in the management specialty occupation that the director identified with the proffered position. On appeal, counsel contends that the director's decision was erroneous, in that the proffered position requires a bachelor's degree in a health-related field, not in management, and that, therefore, the beneficiary possesses the educational credentials necessary to serve in the relevant specialty occupation.

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.

In reaching its determination on the appeal, the AAO considered the entire record of proceeding, which contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the RFE; (4) the director's denial letter; and (5) counsel's letter on appeal, along with its enclosures.

On review of the entire record, including all submissions by counsel and the petitioner to date, the AAO has determined that the appeal must be dismissed and the petition denied, because the evidence of record has not established that the beneficiary's educational credentials qualify him for service in a specialty occupation that would be performed in the proffered position.

The AAO recognizes that, by the Foreign Credential Service of America's educational evaluation of the beneficiary's foreign degree and related grade transcripts, the petitioner has established that the beneficiary holds the equivalent of a U.S. bachelor's degree in physical therapy. However, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C) requires not only that the beneficiary possess a degree in a specific specialty, but also that the beneficiary's specialty degree be "required by the specialty occupation" to be performed in the proffered position. The petitioner has not satisfied this second aspect of the criterion.

The evidence of record describes the proffered position in general terms, such as: participation in "the definition of factors which influence and affect the care rendered to the clinic's patients"; design, periodic review, update, and implementation of the clinic's total quality assurance plan; identification of "general and specific needs of staff relative to their skills"; arrangement of special training for clinic employees; ensurance that the staff has the materials necessary for their duties; and yearly review and recommendations on the clinic's policy and procedural manual and other policy and procedure documents. The evidence of record does not, however, provide a sufficient description of the proposed duties to support counsel's contention that they require a bachelor's degree in physical therapy or any health-related field. Illustrative of the lack of specific details about the actual tasks that would engage the beneficiary is this excerpt from counsel's letter of reply to the RFE:

> [The beneficiary] will be under the direct supervision of the Administrator and will receive in-service training and attend seminars. While on the job, he will accumulate and perfect the requirements necessary to perform the duties required. [The petitioner] intends to hire [the beneficiary] and train him based on the clinic's mission and vision. [The beneficiary] meets the qualifications needed to perform the duties of a Quality Improvement Manager based solely on his medical knowledge and experience as a healthcare professional.

In light of the lack of specific information on which to assess the extent of specialized health-care knowledge that would be required, the petitioner has not demonstrated that the beneficiary's degree is a necessary prerequisite for serving in the proffered position.

Because the petitioner has failed to establish that the beneficiary is qualified to perform in a specialty occupation required for the proffered position, 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.