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FILE: WAC 02 119 53844 Office: CALIFORNIA SERVICE CENTER Date: MAY 03 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:
[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 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.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 an employment services and placement company that seeks to employ the beneficiary as a rehabilitation services coordinator. 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 he found the beneficiary not qualified to perform the duties of a specialty occupation. Specifically, the director found that the beneficiary did not possess the one-year of prior clinical experience in a U.S. hospital or a license to practice in the State of California, as required in the contract between the petitioner and its client. On appeal, counsel explains that the contract provided in response to the director's request for evidence was meant to show that there was a business relationship between the petitioner and the organization where the beneficiary would work. It was not a contract between the petitioner and the beneficiary. Counsel states that that particular contract referred to the work site's requirements for nurses, not for rehabilitation services coordinators.

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 rehabilitation services coordinator. The petitioner indicated that it wished to hire the beneficiary because she possessed a bachelor's degree in psychology and related work experience. The petitioner requires a baccalaureate degree or its equivalent in a health-related field for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary lacked the work experience and license specified in the contract between the petitioner and the beneficiary's intended worksite. The director's decision indicates a finding that the proffered position qualifies as a specialty occupation. On appeal, counsel states that the license and U.S. clinical experience are not required of rehabilitation services coordinators, only of nurses. Counsel states that the beneficiary is qualified to perform the duties of the specialty occupation, as she holds a Filipino degree which has been determined by the Academic Credentials Evaluation Institute to be equivalent to a baccalaureate degree in psychology from a U.S. college or university.

The duties described in the record appear similar to those of a rehabilitation counselor as that position is described in the Department of Labor's *Occupational Outlook Handbook*. Psychology is a field of study directly related to the duties involved in the proffered position. At this time, the State of California has no licensing or credentials requirements for such counselors; thus, it appears that the beneficiary possesses the necessary qualifications to perform the duties of this specialty occupation.

The record, however, is deficient in that the only job description submitted was that provided by the petitioner. The petitioner must submit a job description provided by its client, Orthopedic Hospital, as this is the job site where the petitioner would actually work.

In *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000), the court held that the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing the foreign nurses require a bachelor's degree for all employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the nurses to the United States for employment with the agency's clients.

Although the record contains an agency service agreement between the petitioner and Orthopedic Hospital, the record does not contain a comprehensive description of the beneficiary's proposed duties from an authorized representative of Orthopedic Hospital. Without such a description, the petitioner has not demonstrated that the work that the beneficiary will perform at Orthopedic Hospital will qualify as a specialty occupation.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the job as described by the beneficiary's actual employer constitutes a specialty occupation, and any other evidence the director may deem necessary. 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 October 15, 2002 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.