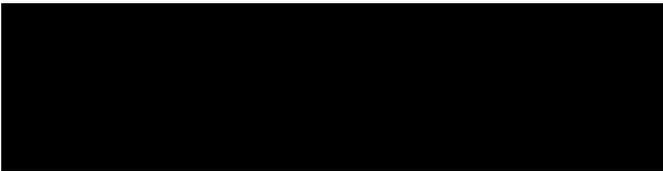




U.S. Citizenship  
and Immigration  
Services



FILE: EAC 03 120 54238 Office: VERMONT SERVICE CENTER

Date: DEC 14 2012

IN RE: Petitioner:  
Beneficiary:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 health facility that 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 was not qualified to perform the duties of the proffered position. On appeal, the petitioner states that the record contains an advisory evaluation of the beneficiary's credentials and that the beneficiary has been granted a temporary license from the New York State Education Department.

Section 214(i)(2) of 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien seeking H classification in that occupation must have that license prior to the approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

According to 8 C.F.R. § 214.2(h)(4)(v)(B), if a temporary license is available to the alien and H classification is required 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.

Furthermore, 8 C.F.R. § 214.2(h)(4)(v)(C) provides that in certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

Finally, CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The record contains two letters from the State Education Department/The University of the State of New York, Albany, New York. The first letter, dated February 2, 2001, stated that the Bureau of Comparative Education approved the beneficiary's educational credentials for licensure in physical therapy. The subsequent letter, dated April 30, 2003, stated that the beneficiary met certain requirements for a limited permit to practice physical therapy in New York State. This letter mentioned that the limited permit to practice physical therapy would be issued upon receipt of evidence that the beneficiary held valid status from Citizenship and Immigration Services to work in the United States.

The evidentiary record shows that the petitioner failed to establish that the beneficiary was eligible for the I-129 petition at the time the petition was filed. According to the evidence in this record of proceeding, the I-129 petition filed by the petitioner was received by CIS on March 10, 2003. However, the letter from the State Education Department/The University of the State of New York, that stated that the beneficiary qualified for a limited permit to practice physical therapy in New York State, was dated April 30, 2003, subsequent to the filing of the I-129 petition. Equally important, the AAO notes that no evidence in the record elaborated on the restrictions of the limited permit. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Accordingly, the petitioner failed to establish that the beneficiary was eligible to perform duties in the proffered position at the time the I-129 petition was filed.

Based on the above reasons, the petitioner fails 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.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 3 U.S.C. § 1201. The petitioner has not sustained that burden.

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