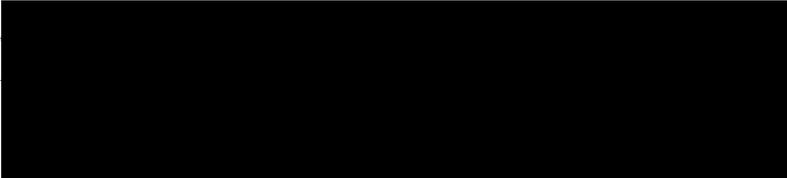




U.S. Citizenship
and Immigration
Services



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FILE: LIN 05 223 51607 Office: NEBRASKA SERVICE CENTER Date: DEC 13 2005

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

PUBLIC COPY

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 biomedical research facility and seeks to employ the beneficiary as an associate professor. 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 stating that the beneficiary does not qualify to perform the duties of the proffered position as he does not have a license to practice medicine in the State of Kansas. On appeal, the petitioner states that the duties of the position detailed in the record are actually duties for two separate positions, and that the petitioner has applied for a Kansas medical license. The petitioner also indicated that a brief and/or evidence in support of the appeal would be provided within 30 days. To date, no brief or additional evidence has been filed of record.

Implicit in the director's decision is that the proffered position qualifies as a specialty occupation. The sole basis for denial was that the beneficiary was not qualified to perform the duties of the position. Thus, the only issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of the offered position.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) 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, the 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 duties of the proffered position were detailed by the petitioner as follows:

DESCRIPTION OF SERVICE ACTIVITIES:

The expectation for this position is that you will be responsible for two 4-hour outpatient clinics each week. You will participate in hematology inpatient and bone marrow transplant attending coverage rotation, the acute hematology clinic rotation, and the hematology consultation service which includes the supervision and performance of bone marrow aspirates and biopsies with formal interpretation of the aspirates. You will spend 3 to 4 months a year on each rotation. Participation in these rotations requires periodic weekend coverage.

DESCRIPTION OF TEACHING ACTIVITIES:

You will be actively engaged in medical student, resident and fellow education through didactic teaching, Grand Rounds and clinical instruction/demonstration. You will be expected to participate in conferences, service and education activities of the Department and Division.

DESCRIPTION OF RESEARCH/SCHOLARSHIP ACTIVITIES:

You will be expected to develop your own clinical and/or clinical/translational research and publish two peer reviewed articles per year. You are expected to be first author on at least one manuscript per year.

The director denied the petition because the duties presented by the petitioner included the treatment of patients, and the petitioner had not established that the beneficiary was licensed to practice medicine in the State of Kansas. In response to the director's request for evidence, the petitioner indicated that the beneficiary would be employed concurrently in positions with Kansas University Medical Center (KUMC) and Kansas University (KU) Internal Medicine. In his role with KUMC, the beneficiary would instruct students and complete research. In his position with KU Internal Medicine, the beneficiary would practice in clinical areas and provide patient care. The petitioner further stated that a separate Form I-129 petition would be filed for the KU Internal Medicine position. The record establishes that the beneficiary has the requisite educational background to perform the duties of the offered position, and presently holds a license to practice medicine in the State of Illinois. The beneficiary does not, however, have a license to practice medicine in the State of Kansas.

The duties to be performed by the beneficiary, as detailed by the petitioner in its letter of April 4, 2005, indicate that the beneficiary's teaching activities for KUMC would include "Grand Rounds and clinical

instruction/demonstration.” These duties would necessarily entail patient contact and treatment in providing instruction to students demonstrating various medical procedures/diagnoses. The duties of the position, as detailed by the petitioner, are not limited to classroom instruction and/or research. As such, the beneficiary would be performing the duties of a physician as well as classroom instructor/researcher, and would accordingly be required to possess a medical license in Kansas. 8 C.F.R. § 214.2(h)(4)(viii)(A)(1) provides that an H-1B petition for a physician shall be accompanied by evidence that the physician has a license or other authorization required by the state of intended employment to practice medicine, or is exempt by law therefrom, if the physician will perform direct patient care and the state requires a license or authorization. The petitioner has not established that the beneficiary has the requisite license in this instance, or that he is exempt from any such requirement. The beneficiary is, therefore, not qualified to enter the United States and immediately engage in employment in the offered position. 8 C.F.R. § 214.2(h)(4)(v)(A).

The petitioner has failed 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, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

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