

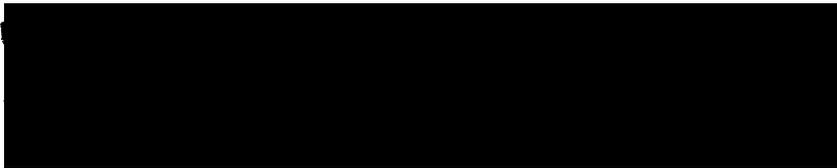
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FILE: EAC 04 016 52786 Office: VERMONT SERVICE CENTER Date: JUN 15 2005

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 sustained. The petition will be approved.

The petitioner is the public school system of a county in the Commonwealth of Virginia. In order to employ the beneficiary as a mathematics teacher in two of its middle schools, 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 petitioner is requesting a one-year extension of the beneficiary's H-1B classification that had been granted, on approval of an earlier petition.

The director denied the petition on the basis that the petitioner had failed to obtain the licensure required to teach in the Virginia public school system: "The record does not contain evidence that the beneficiary has obtained a permanent license in the state of intended employment, or that he/she continues to hold a temporary license valid in the same state for the period of requested extension."

Section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), 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." The regulations on the licensure requirements for H-1B and other H nonimmigrant classifications are at 8 C.F.R. §§ 214.2(h)(v)(A) to (E).

Pursuant to the regulation at 8 C.F.R. § 214.2(h)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Pursuant to 8 C.F.R. § 214.2(h)(v)(B), if a temporary license is available and the alien is allowed 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.

Where licensure is required in any occupation, 8 C.F.R. § 214.2(h)(v)(E) specifies that the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. This regulation also provides that an alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year, unless he or she has (1) obtained a permanent license in the state of intended employment, or (2) continues to hold a temporary license valid in the same state for the period of the requested extension.

The record indicates that the Commonwealth of Virginia requires either permanent or provisional licensure as a condition precedent to a person working as a teacher in its public school system. When the present petition was filed, on October 23, 2003, neither a permanent nor a provisional license had been issued.

On appeal, counsel does not dispute the director's factual finding that a license had not been obtained at the time the petition was filed. Rather, counsel relies upon the retroactively effective date of the provisional license that was later issued.

Counsel submits copies of two documents to establish that the beneficiary "could legally perform the duties of the job offer" during the period of employment specified in the petition (October 24, 2003 to June 30, 2004). These documents are (1) a Virginia provisional license certificate that indicates that, by a provisional license issued on January 22, 2004 and "Effective July 1, 2003 to June 30, 2006," the beneficiary is authorized to teach mathematics in Virginia public schools; and (2) a January 22, 2004 letter from the Virginia Department of Education that accompanied the provisional license certificate and confirmed the July 2003 to June 2006 effective period of the license.

In light of Virginia law and the recently available documents submitted on appeal, the appeal will be sustained. The provisional license's effective dates (July 1, 2003 to June 30, 2006) include the period for which the petitioner filed the present petition to extend the beneficiary's classification (October 24, 2003 to June 30, 2004). The regulation at 8 Virginia Administrative Code 20-21-50 B states: "All licenses will be effective from July 1 in the school year in which the application is made."

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.