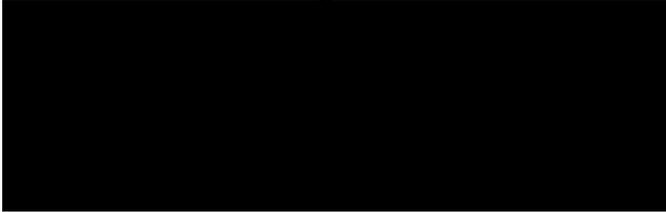


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FILE: WAC 03 186 51633 Office: CALIFORNIA SERVICE CENTER Date: OCT 07 2005

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:



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 sustained.

The petitioner is a skilled nursing facility that seeks to employ the beneficiary as a physical therapist intern. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence, including letters from similar businesses.

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):

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-1A 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)(4)(v)(C):

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.

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 physical therapist intern. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in physical therapy and qualifications for state licensure.

The director found that the beneficiary was not qualified for the proffered position because the record contains no authorization for a physical therapist intern position from the Physical Therapy Board of California. On appeal, counsel states, in part, that the beneficiary is qualified for the position because she holds the equivalent of a U.S. bachelor's degree in physical therapy and is an applicant for a U.S. license as a physical therapist. Counsel states further that the beneficiary, acting in the capacity of a physical therapist intern, is not required to hold a California license because she will be under 100 percent supervision of a registered physical therapist.

Pursuant to the California Code of Regulations Title 16, Division 13.2 § 1399.10. Supervision of Physical Therapist License Applicants:

Pursuant to Section 2639 of the code, a physical therapist license applicant whose application for licensure has been filed and reviewed by the board may perform as a physical therapist if he or she is under the direct and immediate supervision of a physical therapist licensed by the board. "Direct and immediate supervision" means a supervisor shall at all times be responsible for and provide adequate supervision of the work performed by the physical therapist license applicant and shall be in close proximity to the location where the physical therapist license applicant is rendering physical therapy treatment. The physical therapist license applicant shall document each treatment in the patient record, along with his or her signature. A supervising physical therapist shall countersign with his or her first initial and last name in the patient's record on the same day as patient related tasks were provided by the physical therapist license applicant.

A supervising physical therapist shall document receipt of the letter authorizing physical therapist license applicant status and record the expiration date of such status in the employee record. A supervising physical therapist shall require the applicant to provide documentation of the license issued at the conclusion of the of the physical therapist license applicant status. If the applicant fails to pass the licensing examination all privileges to work as a physical therapist license applicant shall terminate. . . .

The proffered position is that of a physical therapist intern for the petitioning entity, a rehabilitation and healthcare facility established in 1970, with 300 employees and a gross annual income in excess of \$10 million. In its *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the Department of Labor finds that all states require physical therapists to pass a licensure exam before they can practice, after graduating from an accredited physical therapist educational program. In this case, the record contains a copy of the beneficiary's foreign bachelor's degree in physical therapy, and an evaluation from a company that specializes in evaluating academic credentials concluding that the beneficiary's foreign degree is equivalent to a U.S. bachelor's degree in physical therapy. The record also contains a letter addressed to the beneficiary, dated January 28, 2004, from the Licensing Services of the Physical Therapy Board of California, which states, in part: "The Physical Therapy Board of California received your application for physical therapist licensure." The record additionally contains a letter, dated November 20, 2003, from the petitioner's administrator indicating that the beneficiary would be working "under 100% supervision of a Registered Physical Therapist." As such, the beneficiary meets the qualifications of 8 C.F.R. § 214.2(h)(4)(v)(C). In view of the foregoing, it is concluded that the petitioner has demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation within the meaning of regulations.

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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.