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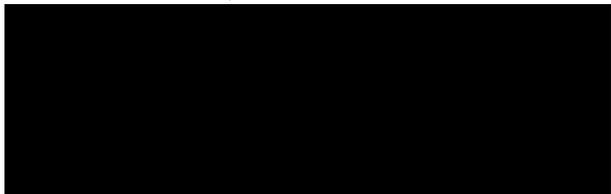
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FILE: LIN 03 153 54077 Office: NEBRASKA SERVICE CENTER Date: OCT 28 2005

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.

Robert P. Wiemann

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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a chiropractic medical office and seeks to employ the beneficiary as an alternative medical researcher. 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 finding that the beneficiary was a graduate of a foreign medical school coming to the United States to perform services as a member of the medical profession and, as such, was ineligible for H-1B classification under § 212(j)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(j)(2). On appeal, counsel submits a brief stating that the beneficiary is not subject to the provisions of § 212(j)(2) of the Act.

The issue to be considered is whether the beneficiary is subject to the provisions of § 212(j)(2) of the Act.

Section 212(j)(2) of the Act, 8 U.S.C. § 1182(j)(2), provides that an alien who is a graduate of a medical school and who is coming to the United States to perform services as a member of the medical profession may not be admitted as a nonimmigrant under section 101(a)(15)(H)(1)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), unless: the alien is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency; or the alien has passed applicable licensing examinations for physicians; and has competency in oral and written English, or is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education.

This cited provision of the Act does not apply to graduates of foreign medical schools who are coming to the United States to perform services in areas outside the medical profession. The issue, therefore, is whether the proffered position is considered part of the medical profession.

The Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that chiropractors, also known as doctors of chiropractic or chiropractic physicians, diagnose and treat patients whose health problems are associated with the body's muscular, nervous, and skeletal systems, especially the spine. The chiropractic approach to healthcare is holistic, stressing overall health and wellness. Chiropractors provide natural, drugless, non-surgical health treatments for patients. All States and the District of Columbia regulate the practice of chiropractic and grant licenses to chiropractors who meet the educational and examination requirements established by the State, and chiropractors can practice only in the State where they are licensed. Most States require at least two years of undergraduate education, and an increasing number are requiring a 4-year bachelor's degree; plus completion of a 4-year program at an accredited chiropractic college leading to the Doctor of Chiropractic degree. An individual is not required, however, to obtain a medical degree in order to become a chiropractor. Section 212(j)(2) of the Act pertains to graduates of foreign medical schools who are coming to the United States to perform services as a member of the medical profession, which is reasonably interpreted to mean individuals coming to the United States to work in a profession requiring a medical degree. The statutory provision does not, therefore, apply to the facts of this case.

The director did not comment on whether the proffered position qualifies as a specialty occupation, or whether the beneficiary is qualified to perform the duties of a specialty occupation as the petition was denied on another ground. As such, this matter must be remanded to the director to determine whether the position is a specialty

occupation, and if so, whether the beneficiary is qualified to perform the duties of the position. It should be noted that a portion of the described duties requires the beneficiary to review patient histories, and discuss patient charts with physicians (chiropractors) including diagnosis, prognosis, and treatment. As such, it would appear that the beneficiary would be performing the duties of a chiropractor since she would be assisting in rendering a patient diagnosis, and determining the prognosis and treatment of the patient, which would require her to be licensed as a chiropractor. The director may request such additional evidence as he deems necessary in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion. The director shall certify the matter to the AAO should his determination be adverse to the petitioner.