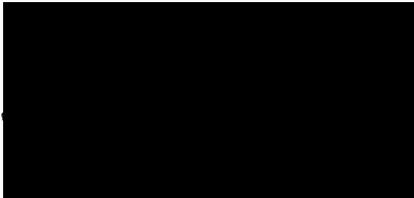


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**U.S. Citizenship
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FILE: LIN 04 174 52124 Office: NEBRASKA SERVICE CENTER Date: **SEP 16 2005**

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

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 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 a non-profit hospital that seeks to employ the beneficiary as a medical resident physician. 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, finding that the beneficiary is not qualified to perform the proffered position because she does not possess proper licensure. On appeal, the petitioner asserts that the beneficiary qualifies for the proffered 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 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.

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. The AAO reviewed the record in its entirety before issuing its decision.

The director stated that the letter from the Missouri Division of Professional Regulation stated that the beneficiary will be issued a temporary license to practice as a physician and surgeon in the state of Missouri upon receipt of her social security number. The director stated the memorandum from Thomas Cook, dated November 20, 2001, indicates that CIS will accommodate aliens whose only obstacle to obtaining licensure is due to a lack of a social security number because the alien is not physically present in the United States. The director stated that as the beneficiary is in the United States in H-4 nonimmigrant status, the memorandum does not apply here. The director therefore concluded that since the beneficiary does not possess proper licensure she is not qualified for the proposed position.

On appeal, the petitioner asserts that the beneficiary qualifies for the proffered position, and refers to a memorandum from an ombudsman to support the assertion. The petitioner conveys that the state of Missouri issued a letter indicating that the beneficiary would be issued a temporary license to practice as a physician in the state of Missouri upon receipt of her social security number. The petitioner states that the beneficiary presently holds H-4 nonimmigrant status, which does not permit issuance of a social security number for employment.

Upon review of the record, the petitioner has established that the beneficiary qualifies to perform the proposed position under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

Pursuant to Title 4, Division 150-2.060, paragraph 4, of the Code of State Regulations of Missouri, applicants applying for a temporary licensure who have graduated from schools outside the United States or Canada must have and show proof of a permanent Educational Commission for Foreign Medical Graduates (ECFMG) certificate or show evidence to the board that the application has passed the equivalent licensing board examination in another state. Here, the record contains a certificate from the ECFMG stating that the beneficiary satisfied all the requirements of the commission, successfully passing its examinations, including the English examination. The record also contains a May 10, 2004 letter from the Missouri Department of Economic Development, Division of Professional Registration stating that the beneficiary would be issued a temporary license to practice as a physician and surgeon in the state of Missouri upon receipt of a social security number; score reports; and the beneficiary's bachelor of medicine and bachelor of surgery from Karnatak University.

The H-4 nonimmigrant status, which the beneficiary holds, enables an alien to accompany or follow to join a principal H-1 nonimmigrant, but does not permit employment in the United States. The petitioner correctly stated that in the H-4 status the beneficiary is not allowed to work in the United States and is not permitted to obtain a social security number for employment.¹ A November 20, 2001 memorandum from Thomas E. Cook discussing social securing cards and the adjudication of H-1B petitions for public high school teachers is relevant here. It states that:

¹ The petitioner has not explained why the beneficiary has not obtained a social security number not valid for work authorization, which is available to those legally in the United States in H-4 nonimmigrant classification.

An H-1B petition filed on behalf of an alien beneficiary who does not have a valid state license shall be approved for a period of 1-year provided that the only obstacle to obtaining state licensure is the fact that the alien cannot obtain a social security card from the SSA. Petitions filed for these aliens must contain evidence from the state licensing board clearly stating that the only obstacle to the issuance of state licensure is the lack of a social security card. In addition, the petitioner must establish that all other regulatory and statutory requirements for the occupation have been met. . . .

The official statement from Missouri's licensing authority indicates that the beneficiary is eligible for temporary licensure and that licensure can be obtained immediately upon the receipt of a social security number. The approval of the H-1B petition will provide the beneficiary with a nonimmigrant classification that will permit her to obtain a social security number, and the state of Missouri will then issue a temporary license for her to practice as a physician and surgeon there. In light of this, CIS will approve the instant petition for one year as the beneficiary is otherwise qualified but for lack of having a social security number, which would enable her to obtain temporary licensure.

As related in the discussion above, the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position.

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 for one year.