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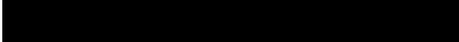
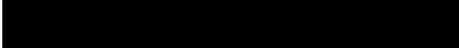
U.S. Citizenship
and Immigration
Services

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FILE: WAC 05 002 50108 Office: CALIFORNIA SERVICE CENTER Date: **AUG 07 2006**

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
Robert P. Wiemann, Chief
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 an intermediate care facility for the developmentally disabled - habilitative (ICF/DD-H) that seeks to employ the beneficiary as a Qualified Mental Retardation Professional (QMRP). 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 proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and additional evidence including copies of the petitioner's current business license and tax forms for the petitioner's interdisciplinary team.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (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 QMRP. Evidence of the beneficiary's duties includes: the I-129 petition; counsel's September 22, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform the following duties:

Develop and implement the Individual Service Plans (ISP) for each developmentally disabled client/resident in the facility. Lead an interdisciplinary ISP team – psychologist, physical therapist, occupational therapist, speech therapist and recreational therapist – in assessing each resident's mental, physical and health rehabilitation requirements based on the Treatment Authorization Requests (TAR) approved by the State and, formulate an ISP and training plan for each client based on such assessments. Do a quarterly review of ISPs formulated with the ISP team. Monitor and supervise direct care staff in implementation of ISP and training plans. Write and/or update facility program plans for the 2 facilities and submit to the Department of Health Services for approval. Act as liaison with State and federal agencies and ensure compliance and timely filings of TAR and other required documentary filings. Ensure that data collection sheets, ISP summaries and other records are maintained for annual state and federal audits.

Counsel indicated that a qualified candidate for the job would possess a bachelor's degree in a related field, in accordance with the requirements set forth in the California Health and Safety Code.

The director found that the proffered position was not a specialty occupation because the petitioner provided an expired facility license, and had not provided the requested information such as quarterly tax information and evidence that it would have an interdisciplinary team for the beneficiary to coordinate. The director found further that, without such information, the petitioner had not demonstrated that a specialty occupation exists for the beneficiary.

On appeal, counsel states, in part, that the beneficiary will be working on a full-time basis as a QMRP. Counsel provides a list of documents submitted by the petitioner in response to the director's request for additional evidence, including copies of the petitioner's business license, federal tax returns, and organizational chart. Counsel submits additional documentation on appeal comprising copies of the petitioner's current business license and tax forms for the petitioner's interdisciplinary team.

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. While the AAO normally consults the *Handbook* for information about the duties and educational requirements of particular occupations, that publication does not contain information about all jobs in the labor market, such as the position offered herein. The proffered position is that of a QMRP for a licensed facility for the developmentally disabled–habilitative (ICF/DD-H). A review of the California Code of Regulations finds that a QMRP position requires a degree in a specialty. Pursuant to the C.C.R., Title 22, Division 5, Chapter 8.5, Article 1, Section 76830 (a), a QMRP is defined as a person who has specialized training or one year of experience in treating or working with the developmentally disabled and is one of the following:

- (1) A person with a master's degree in psychology;

- (2) A physician;
- (3) An educator with a degree in education;
- (4) A social worker with a bachelor's degree in:
 - (A) Social work from an accredited program; or
 - (B) A field other than social work and at least three (3) years of social work experience under the supervision of a social worker with a master's degree;
- (5) A physical therapist;
- (6) An occupational therapist;
- (7) A speech pathologist;
- (8) An audiologist;
- (9) A registered nurse;
- (10) A recreation therapist; or
- (11) A rehabilitation counselor.

A review of the record in its entirety finds that the proffered QMRP position is a specialty occupation and that a specialty occupation exists for the beneficiary. As such, the petitioner has overcome this portion of the director's objections.

The director also found that the beneficiary was not qualified to perform the duties of the proffered position because he does not have the required minimum of one year of work experience with mentally retarded or developmentally disabled persons, which is mandated by federal regulations. The director found further that the record does not contain any evidence that the California Department of Developmental Services (DDS) has approved the beneficiary as a QMRP. On appeal, counsel states, in part, that the beneficiary's "long years of experience as an educator" qualifies as an equivalent of the required work experience. Counsel states further that no state licensing is required for a QMRP position.

The beneficiary in this case holds a foreign bachelor's degree in "radiologic" technology and a foreign master's degree in education with a major in administration and supervision. An evaluation from a company that specializes in evaluating academic credentials indicates that the beneficiary holds the U.S. equivalent of a Bachelor of Science degree in Radiological Technology and a Master of Arts degree in education administration and supervision. Although the beneficiary holds one of the required degrees, in accordance with the C.C.R., Title 22, Division 5, Chapter 8.5, Article 1, Section 76830 (a), namely that of a degree in education, the petitioner has not established that he has the required work experience. Counsel's assertion on appeal that the beneficiary holds equivalent work experience is noted. She does not, however, provide any evidence in support of her assertion. Without documentary evidence to support the claim, the assertions of

counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, a review of the website at http://www.dds.ca.gov/ICF/ICF_QMRP_Requirements.cfm finds that California's DDS must review and approve all QMRPs. The record, however, does not contain any evidence that the DDS has approved the beneficiary as a QMRP. Thus, the record does not establish that the beneficiary is qualified to perform the services of the proffered position. For this reason, the petition may not be approved. 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.

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