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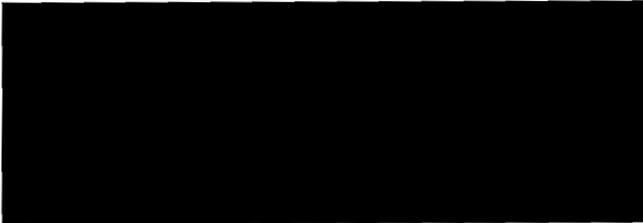
FILE: WAC 03 113 50211 Office: CALIFORNIA SERVICE CENTER Date: APR 05 2006

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.

for *Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) remanded the subsequent appeal back to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a home health agency that seeks to employ the beneficiary as a rehabilitation specialist. The petitioner, therefore, seeks 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's two requests for evidence, dated August 1, 2003 and November 14, 2003; (3) the petitioner's responses to the director's requests; (4) the director's April 27, 2004 denial letter; (5) the Form I-290B and supporting documentation; (6) the AAO's remand of the Form I-129 to the director; (7) the director's November 21, 2005 notice of intent to deny the petition; and (8) the director's January 20, 2006 notice of certification. The AAO reviewed the record in its entirety before issuing its decision.

The AAO remanded the case to the director on October 3, 2005 after having determined that the proposed position qualifies for classification as a specialty occupation. The AAO had found that the duties of the proposed position closely resemble those of an occupational therapist. However, the director had not addressed the issue of whether the beneficiary possessed licensure in occupational therapy. The matter was, therefore, remanded to the director for his determination of the beneficiary's qualifications, with certification to the AAO should his decision be adverse to the petitioner.

In his notice of intent to deny, the director afforded the petitioner thirty days to submit evidence of the beneficiary's licensure in occupational therapy. However, the petitioner did not respond. Accordingly, the director found the beneficiary to lack the qualifications necessary to perform the duties of the specialty occupation, and certified his decision to the AAO for review.

The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource upon which the AAO routinely consults for its information about the duties and educational requirements of particular occupations, reports the following educational requirements for those seeking employment as occupational therapists:

Currently, a bachelor's degree in occupational therapy is the minimum requirement for entry into this field. Beginning in 2007, however, a master's degree or higher will be the minimum educational requirement. As a result, students in bachelor's-level programs should complete their coursework and fieldwork before 2007. All States, Puerto Rico, and the District of Columbia regulate the practice of occupational therapy. To obtain a license, applicants must graduate from an accredited educational program and pass a national certification examination.

No evidence contained in the record of proceeding demonstrates that the beneficiary is qualified to perform the duties of the proposed position, which involves the practice of occupational therapy and therefore requires licensure. The director addressed this issue in his notice of intent to deny, and the petitioner did not provide evidence of the requisite licensure. Therefore, the director's decision will be affirmed.

Therefore, for reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C). 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 director's January 20, 2006 decision is affirmed. The petition is denied.