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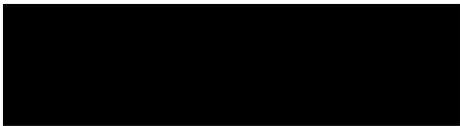
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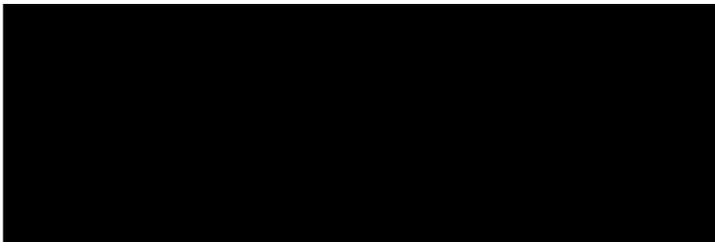
FILE: WAC 04 249 52191 Office: CALIFORNIA SERVICE CENTER Date: DEC 05 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the AAO withdrew the decision, remanded the matter to the director for entry of a new decision, and ordered that if the decision was adverse to the petitioner it was to be certified to the AAO for review. On remand, the director 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 medical and service company that seeks to employ the beneficiary as a medical research assistant. 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 nonimmigrant visa petition on the ground that the offered position does not qualify as a specialty occupation. The AAO withdrew the decision, finding that the position qualifies as a specialty occupation, and remanded the matter to the director to determine whether the beneficiary is qualified for the position, which the AAO found to require licensure to practice as a physician assistant (PA) in California. The AAO ordered that if the director's decision was adverse to the petitioner it was to be certified to the AAO for review. On remand, the director's request for evidence, dated May 20, 2006, sought evidence of the beneficiary's qualifications to perform the duties of a PA. In response, counsel submitted a letter, dated August 7, 2006, stating that the proposed duties are not those of a PA, but parallel a medical research assistant, an occupation that does not require licensure. The director denied the petition on remand finding that the beneficiary lacks the qualifications to perform the duties of a PA in California. The director certified his decision to the AAO for review.

On certification, counsel's September 25, 2006 letter states that the proposed position is that of a medical research assistant, not a PA, and that a medical research assistant is not required to possess licensure. Counsel contends that the AAO has not concluded that the proffered position's title is "PA" even though it finds that the job duties correspond to a PA. Counsel analogizes the proposed position to an accountant; he states that except for "certifying" work prohibited by the law an accountant is not required to possess licensure.

Upon review of the record, the AAO finds that the beneficiary is not qualified to perform the duties of a PA in the state of California.

The AAO decision, dated March 22, 2006, found that the proposed duties are a combination of those of a radiologic technologist and technician, which are nonspecialty occupations, and a PA, which is a specialty occupation. In the decision the AAO found the beneficiary qualified to perform the duties of a radiologic technologist, but it did not find that she possessed licensure to practice as a PA in California, as required by California law. On certification, counsel's August 7, 2006 and September 25, 2006 letters and other documentation in the record fail to establish the beneficiary's qualifications to practice as a PA in California. It is noted that there is no supporting evidence of record supporting the assertion of counsel in the August 7, 2006 and September 25, 2006 letters, which assertion is that the proposed position corresponds to a medical research assistant and that California law does not require licensure for that occupation. The assertions of

counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel contends that the AAO has not titled the proposed position "PA." The AAO has not indicated that the title of the proffered position is "PA" as the duties of the position are a combination of those of a PA and a radiologic technologist, which the AAO's March 22, 2006 decision states. Furthermore, in determining whether a position qualifies as a specialty occupation, the AAO looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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 August 31, 2006 decision is affirmed. The petition is denied.