

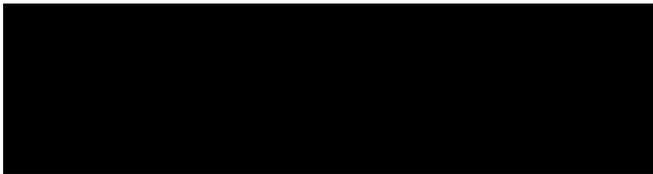
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U.S. Department of Homeland Security
20 Mass. Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: WAC 04 209 51398 Office: CALIFORNIA SERVICE CENTER Date: ~~JAN~~ 06 2006

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.

A handwritten signature in cursive script, appearing to read "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 appeal will be rejected.

The petitioner is a skilled nursing and sub-acute care facility that seeks to employ the beneficiary as an occupational therapist and to classify her 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 on the basis that the petitioner did not meet its burden to establish that the beneficiary was eligible for the benefit sought under section 291 of the Act, 8 U.S.C. § 1361.

The beneficiary, not an authorized representative of the petitioner, signed the Form G-28, Entry of Appearance as Attorney or Representative submitted in conjunction with the appeal. Citizenship and Immigration Services (CIS) regulations specifically state that a beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). As the beneficiary is not a recognized party, counsel is not authorized to file an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). Accordingly, the AAO will reject the appeal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The AAO notes that, at the time of the petition, July 20, 2004, the beneficiary was not licensed as an occupational therapist. The director requested proof of licensure and the petitioner replied that the beneficiary was in the process of obtaining licensure. In a decision dated December 9, 2004, the director denied the petition because the beneficiary did not have proper licensure. On appeal, counsel submits proof that the beneficiary received licensure from the state of Nevada on July 27, 2005. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

ORDER: The appeal is rejected.