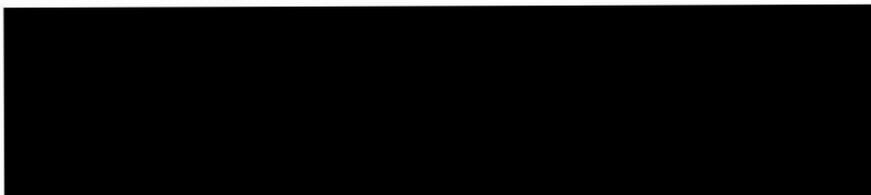




U.S. Citizenship
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Services

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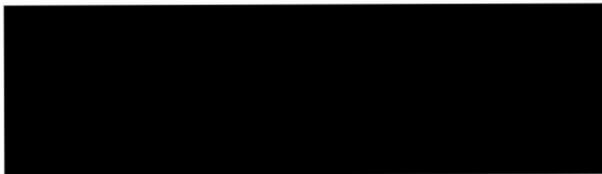
FILE: LIN 04 220 50101 Office: NEBRASKA SERVICE CENTER Date: JUN 06 2006

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 director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the petition remanded for entry of a new decision.

The petitioner is a medical services provider. It seeks to employ the beneficiary as a manager of **rehabilitation services**. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits additional evidence.

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) the 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) the Form I-290B and supporting evidence. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a manager of rehabilitation services. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. The petitioner's July 28, 2004 letter states the following about the beneficiary's duties:

[The beneficiary] will plan, administer and direct the health rehabilitation programs; [sic] physical therapy, occupational, etc., at assigned locations. He will review and analyze therapeutic techniques applicable for patient needs and determine the treatment protocol. He will consult with medical and professional staff from associated health care fields to plan and coordinate joint patient and management objectives. He will conduct staff meetings and devise training programs to maintain staff proficiency with new and existing therapy techniques, and in the use of new methods and equipment to meet patients' needs.

. . . [The beneficiary] will liaise with physicians, patients, and associates to obtain the optimum care possible for individual patients. He will also confer with managed care organizations and associated rehabilitative care organizations relative to patient needs.

[The beneficiary] will also supervise support staff; prepare bi-weekly reports; review patient satisfaction reports for treatment quality and determination of rehabilitation success. He may also recommend patient fees for therapy based on use of equipment and therapy staff; and assist in analyzing operating costs and budget preparation.

The petitioner asserts that the beneficiary is qualified for the proposed position based on his education, a bachelor's degree in liberal studies and an associate of applied science degree in physical therapy assisting; physical therapist assistant license; massage therapy license; and work experience.

In denying the petition, the director questioned the petitioner's need for two managers of rehabilitation services, finding that the record did not substantiate that the beneficiary and the other employer would perform the same duties. The director found that the proposed position did not require a bachelor's degree in a specific specialty, and the submitted job postings did not establish it as a specialty occupation. In addition, the director concluded that the beneficiary lacked the qualifications to determine treatment protocol, direct and administer rehabilitation programs, and perform financial analysis.

To establish the offered position as a specialty occupation, counsel submits on appeal an Internet printout and a *Dictionary of Occupational Titles (DOT) job description*, and submits letters from Mr. [REDACTED], the petitioner's operations manager; Dr. [REDACTED], and **Interim Dean at the College of Liberal Arts and Social Sciences of Cleveland State University (CSU)**; and Ms [REDACTED], supervising physical therapist at Majka PTA.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) requires that the petitioner establish that a baccalaureate or higher degree (or its equivalent) in a specific specialty is the normal minimum requirement for entry into the particular position. The AAO finds that some of the beneficiary's duties parallel those of physical and occupational therapists as those occupations are described in the Ohio Revised Code and the Ohio Administrative Code.

In Ohio, it is the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board (the Board) that actively promotes and protects the health of the citizens of Ohio through regulation of the professions of occupational therapy, physical therapy, and athletic training.¹ The mission statement of the Board provides:

The Ohio Revised Code authorizes the Board to license practitioners of physical therapy, occupational therapy, and athletic training, either through examination or reciprocity.

The laws and rules regulating the practice of occupational therapy are found in Chapter 4755 of the Ohio Revised Code, and Chapters 4755-1 to 4755-9 of the Ohio Administrative Code; and those regulating the practice of physical therapy are found in Chapter 4755 of the Ohio Revised Code, and Chapters 4755-21 to 4755-29 of the Ohio Administrative Code. In section 4755.01 of the Ohio Revised Code, the term "occupational therapy" includes "[p]lanning and implementing activities and programs to improve sensory and motor functioning at the level of performance normal for the individual's state of development." The term "physical therapy" is defined in section 4755.40 of the Ohio Revised Code as "the evaluation and treatment of a person by physical measures and the use of therapeutic exercises and rehabilitative procedures" and:

If performed by a person who is adequately trained, physical therapy includes the design, fabrication, revision, education, and instruction in the use of various assistive devices including braces, splints, ambulatory or locomotion devices, wheelchairs, prosthetics, and orthotics.

Physical therapy also includes the establishment and modification of physical therapy programs, treatment planning, instruction, and consultative services.

A physical therapist assistant is defined in section 4755.40, paragraph (C), of the Ohio Revised Code as:

¹ The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board website is <http://otptat.ohio.gov/about.stm>.

[A] person who assists in the provision of physical therapy treatments under the supervision of a physical therapist, or teaches physical therapy under the supervision of a physical therapist, and includes physical therapy assistant.

According to the Ohio Revised Code, occupational therapy includes “[p]lanning and implementing activities and programs to improve sensory and motor functioning at the level of performance normal for the individual’s state of development” and physical therapy includes establishing and modifying physical therapy programs, treatment planning, instruction, and consultative services. Similarly, the beneficiary will plan, administer, and direct health rehabilitation programs, physical therapy, and occupational therapy; review and analyze therapeutic techniques for patient needs and determine the treatment protocol”; and “review patient satisfaction reports for treatment quality and determination of rehabilitation success.”

Because physical therapist assistants assist “in the provision of physical therapy treatments,” and work under the supervision of a physical therapist, the AAO finds that the offered duties which relate to occupational and physical therapists would not be performed by physical therapy assistants and physical therapist assistants as the proposed duties involve much more than assisting in providing physical therapy treatments. For example, the offered duties entail planning, administering, and directing physical and occupational therapy programs; and reviewing and analyzing therapeutic techniques for patients and determining the treatment protocol. The AAO notes that section 4755-27-03 of the Ohio Revised Code discusses the responsibilities and limitations of a physical therapist assistant.

The Ohio Revised Code indicates that the Board licenses practitioners of physical therapy, occupational therapy, and athletic training. Thus, the offered position requires licensure in physical therapy, occupational therapy, or both practices. Further, section 4755.42 of the Ohio Revised Code states that practicing physical therapy requires graduating from an accredited physical therapy educational program. Section 4755.06 of the Ohio Revised Code requires completing the requirements of an accredited educational program to practice occupational therapy. The Accreditation Counsel for Occupational Therapy Education (ACOTE) website² indicates that a bachelor’s degree in occupational therapy is the minimum requirement for practicing occupational therapy, and the American Physical Therapy Association (APTA) website³ reflects that a bachelor’s degree in physical therapy is the minimum requirement for practicing physical therapy.

Based on the aforementioned discussion, the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO will now address the beneficiary’s qualifications for the proposed position of manager of rehabilitation services.

² The ACOTE website is <http://www.aota.org/nonmembers/area13/links/LINK28.asp#oh>.

³ The APTA website is <http://www.apta.org>.

As already discussed in this decision, occupational therapists and physical therapists require a baccalaureate degree in their respective fields and licensure to practice, in this case for the state of Ohio. The petition will not be approved at this time as no evidence in the record demonstrates that the beneficiary is qualified to perform the duties of occupational therapy and physical therapy. The petition will be remanded in order for the director to address the issue of the beneficiary's qualifications. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of an occupational therapist and a physical therapist, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

ORDER: The director's November 8, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.