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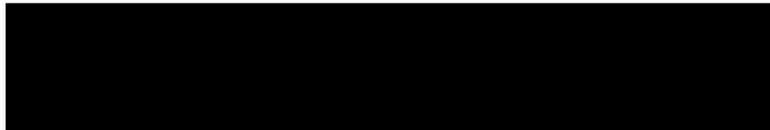
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FILE: EAC 04 069 54235 Office: VERMONT SERVICE CENTER Date: SEP 27 2006

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a staffing agency and seeks to employ the beneficiary as a physical therapist. The petitioner 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 petitioner failed to establish that the beneficiary was qualified to perform the services of a specialty occupation. The director further stated that due to the apparent alteration of documents and misleading statements made by the petitioner, Citizenship and Immigration Services (CIS) could not determine the validity of any position offered or claim made, or the authenticity of any document submitted and held that the petitioner had not established eligibility for the benefit sought. On appeal, counsel submits a brief denying the alteration of documents or that false and misleading statements were made by the petitioner, and states that the petition should be approved.

The issue to be determined is whether the beneficiary is qualified to perform the duties of a specialty occupation, a physical therapist in this instance.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent or the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The director found that the beneficiary was not qualified to perform the duties of the proffered position because the petitioner failed to submit a license to practice physical therapy even though the beneficiary was already working as a physical therapist.

The Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that all states require physical therapists to pass a licensure exam before they can practice, after graduating from an accredited physical therapist educational program. The New York State Education Department's Office of the Professions notes that to meet the professional education requirement for licensure as a physical therapist, an individual obtaining his or her education from a New York State registered or APTA accredited physical therapy program must have a bachelor's or higher degree in physical therapy, or a graduate level certificate in

physical therapy following completion of a bachelor's degree from an institution acceptable to the Department. A bachelor's degree in a specific specialty is, therefore, normally the minimum requirement for entry into the proffered position and the position qualifies as a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record does not establish that the beneficiary is qualified to work as a physical therapist in the State of New York. The beneficiary's foreign education has been determined by a credentials evaluation service to be equivalent to a Bachelor of Science degree in Physical Therapy from an accredited college or university in the United States. The record does not establish, however, that the beneficiary has a license to practice physical therapy in New York. Nor does the record contain documentation from New York licensing authorities stating that the beneficiary may practice physical therapy pending the issuance of a license or other certification required by that state. As such, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position.

The director also makes reference to matters outside the record in issuing its denial of the present petition. If matters outside the record adverse to the petitioner come to the director's attention and are considered in denying a petition, the director should first issue a Notice of Intent to Deny (NOID) giving the petitioner an opportunity to respond to any adverse information considered. The director should also make any such adverse information considered a part of the record. A portion of the information referenced by the director in denying the petition concerns the number of positions petitioned for and approved in unrelated cases, and the petitioner's inconsistent statements concerning employment of those individuals. The petitioner should note that it must notify CIS of any change in employment circumstances of any beneficiary approved for H-1B classification pursuant to C.F.R. § 214.2(h)(11)(i)(A).

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 and the appeal shall accordingly be dismissed.

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