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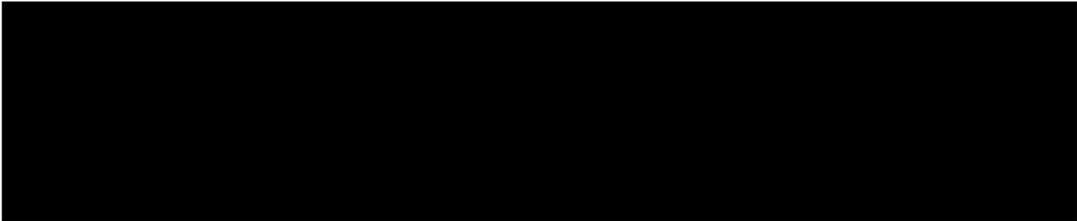
FILE: EAC 05 171 52724 Office: VERMONT SERVICE CENTER Date: FEB 13 2007

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 The director's decision will be withdrawn. The petition will be approved.

The petitioner is a comprehensive outpatient rehabilitation facility that 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 finding that the petitioner failed to submit evidence that the beneficiary met all of the requirements of section 212(a)(5)(C) of the Act.

On appeal, counsel states that the petition was denied for failure to submit a copy of the beneficiary's Foreign Credentialing Commission on Physical Therapy (FCCPT) certificate. Counsel states that the beneficiary has now passed the Test of Spoken English (TSE) and that after her FCCPT certificate is provided to Citizenship and Immigration Services (CIS) she will overcome the section 212(a)(5)(C) grounds of inadmissibility. Counsel submits into the record a copy of the document "Test of Spoken English, Examinee's Score Record" and the CIS regulation pertaining to the TSE test scores.

The record of proceeding before the AAO contains, in part: (1) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks to employ the beneficiary as a physical therapist, which is 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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) states that to qualify to perform services in a specialty occupation an alien must 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.

The petitioner seeks to employ the beneficiary as a physical therapist, an occupation that requires licensure by the state of New Jersey. The record reveals that the beneficiary holds licensure, valid from August 3, 2004 to January 31, 2006, to practice as a physical therapist in the state of New Jersey, her intended location of employment. Thus, based on the evidence in the record the beneficiary is qualified to perform the duties of a physical therapist.

As the position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation, the petition is approved.

Section 212(a)(5)(C) of the Act, 8 U.S.C. § 1182(a)(5)(C) provides that certain foreign health care workers may not be admitted into the United States unless the alien presents to the consular officer or to CIS a certificate from an independent credentialing organization. On appeal, the petitioner submitted a copy of the beneficiary's visa credential verification certificate from the Foreign Credentialing Commission on Physical Therapy, Inc.

While the record establishes that the petition may be approved, the issue of whether or not the beneficiary is admissible to the United States under section 212(a)(5)(C) of the Act is a determination to be made by the director at the time the director adjudicates the extension of status application under 8 C.F.R. § 214.1(a)(3). As the AAO does not have jurisdiction over the application for extension of status, it will not make a determination on the beneficiary's admissibility under section 212(a)(5)(C) of the Act.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The petition is approved.