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JUL 31 2007

FILE: WAC 02 225 50316 Office: CALIFORNIA SERVICE CENTER Date:

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. On appeal, the Administrative Appeals Office (AAO) withdrew the director's decision and remanded the petition for a new decision. The matter is again before the AAO, pursuant to the AAO's instruction that, if adverse to the petitioner, the director certify his new decision to the AAO for review. The decision certified for the AAO's review shall be affirmed. The appeal shall be dismissed, and the petition shall be denied.

The petitioner is a dental clinic that seeks to employ the beneficiary as a researcher of periodontal diseases. The petitioner filed this H-1B petition 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, 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition on the basis of his finding that the proffered position is not a specialty occupation. On appeal, the AAO disagreed. It determined that the proffered position qualifies as a specialty occupation. In pertinent part, the AAO's decision states:

[T]he AAO finds that the proffered position is similar to a dentist. . . . [T]he proffered position is so complex or unique that it can be performed only by a person graduating from an accredited dental school and holding proper licensure, and the nature of the specific duties are so specialized and complex that the knowledge required to perform the duties is associated with the completion of dental school and licensure.

Consonant with its specific finding on the specialty occupation issue, the AAO withdrew the director's decision and remanded the petition for a new decision, with the following guidance:

No evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the specialty occupation – a dentist. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of a dentist, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. . . .

The AAO issued its decision on February 4, 2004.

The record reflects that the director complied with the AAO's instructions as follows. In February 2005, the service center mailed an RFE to counsel at an outdated address, rather than to the then current address, of which counsel gave Citizenship and Immigration Services (CIS) notice in 2003. The post office returned this mailing to the service center as undeliverable as addressed. In August 2005, the service center mailed an RFE to counsel at the new address about which he had informed CIS in 2003. This RFE requested original official records of the beneficiary's college/university transcripts; evidence of licensure as a dentist or excusal from the requirement by the appropriate State Licensing Authority; and a pertinent labor condition application. In the decision certified to the AAO, the director noted that no reply was received to the RFE.

On February 9, 2006, the director issued to the petitioner a notice of certification that complies with the regulation on certifications at 8 C.F.R § 103.4. The notification included the decision being forwarded to the AAO for

review and apprised the petitioner of its right to submit a brief to the AAO within 30 days. The AAO has received no submission in response to the certification notice.

Despite the opportunities presented on remand by the RFE and the notice of certification, the petitioner has provided no evidence to establish that the beneficiary possesses the educational and licensure credentials requisite for the proffered position.

In the decision certified to the AAO the director denies the petition on the basis of the petitioner's failure to present evidence to establish the beneficiary as qualified to serve in the proffered position in accordance with the pertinent regulations. As the evidence of record supports the director's decision, it will be affirmed. The petition will be denied.

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 not met that burden.

ORDER: The director's decision of February 9, 2006 is affirmed. The petition is denied.