

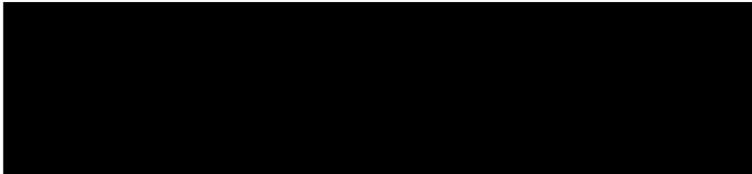
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



D2

JUN 29 2007

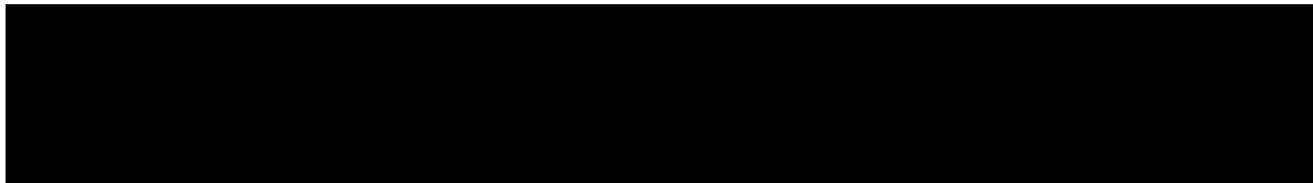
FILE: WAC 04 133 50025 Office: CALIFORNIA SERVICE CENTER Date:

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.

*for*   
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, and the petitioner filed an appeal. The Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter for further examination as to whether the beneficiary is qualified to perform the duties of a specialty occupation. The director denied the petition and certified his decision to the AAO. The director's decision will be affirmed. The petition will be denied.

The petitioner provides rehabilitation services. It seeks to employ the beneficiary as a physical therapy intern. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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. In a subsequent appeal, the AAO withdrew the director's decision and remanded it to the director for further examination of issues related to the beneficiary's qualifications.

The director requested additional evidence from the petitioner, but received no response. The director subsequently denied the petition because the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

Pursuant to 8 C.F.R. § 103.2(a)(13):

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. . . .

The record reflects that on November 17, 2005, the director requested additional evidence from the petitioner concerning the instant petition. As no response was received, the director denied the petition.

Counsel does not submit any additional evidence on certification.

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. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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, an 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.

The director found that the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation because the record contains no evidence that he has complied with California Business and Professions Code section 2639, which requires filing a complete application for licensure with the board.

As the petitioner did not respond to the director's request for additional evidence or submit any additional evidence on certification, the petitioner, therefore, has not overcome the objection of the director. As such, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.

**ORDER:** The director's April 25, 2006 decision is affirmed. The petition is denied.