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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

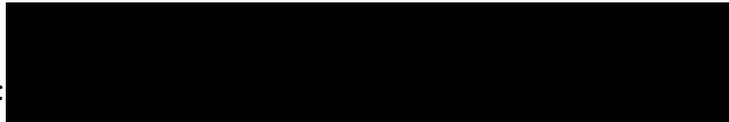
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FILE: EAC 07 124 51885 Office: VERMONT SERVICE CENTER Date: OCT 29 2008

IN RE: . Petitioner:
Beneficiary:



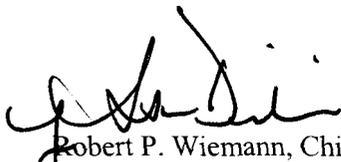
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 The director's decision will be withdrawn and the matter remanded for the entry of a new decision.

The petitioner avers it is a medical and research clinic established in 2002. It claims to employ six personnel and to have had \$750,000 in gross annual income when the petition was filed. It seeks to employ the beneficiary as a research medical assistant. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On July 26, 2007, the director denied the petition, determining that the petitioner: (1) had not provided evidence that the beneficiary was licensed as a medical research assistant in the State of Alabama; and (2) had not provided a letter from the State of Alabama stating that a license was not required. The director concluded that the petitioner had not established that the beneficiary qualified for classification as an H-1B nonimmigrant worker.

On appeal, counsel for the petitioner provides an August 23, 2007 letter from the Alabama State Board of Medical Examiners, Office of General Counsel. In the letter, ██████████ Associate Counsel, states his understanding that the beneficiary would be employed as a research assistant who would not have patient care responsibilities. Mr. ██████████ states that "[a]s long as [the beneficiary] does not engage in any of the activities set out in Ala. Code § 34-24-50(2002), he is not required to be licensed in Alabama." Mr. ██████████ attached a copy of Ala. Code § 34-24-50(2002) defining the practice of medicine or osteopathy to his August 23, 2007 letter.

The AAO finds that the petitioner has provided evidence that the beneficiary may be eligible to perform the duties outlined in the petitioner's letter without a license. The AAO observes that the director in this matter referenced inconsistencies in the petitioner's description and title of the proffered position, but did not actually determine whether the proffered position as described by the petitioner on the Form I-129 and in response to the director's RFE, is a specialty occupation. Similarly, the director notes, but does not find as a basis for denial, that aliens in certain health care occupations which include medical technologists also known as clinical laboratory scientists are inadmissible unless they present a certification from an independent credentialing organization approved by the Attorney General. As the petitioner has presented evidence that the State of Alabama does not have licensing requirements for an individual performing medical research that does not involve patient care, the petitioner has submitted evidence sufficient to overcome the only issue determined by the director. Accordingly, the director decision is withdrawn. The petition may not be approved however, as the petitioner has not provided sufficient evidence establishing that the proffered position is a specialty occupation.

Upon review of the record, including counsel's brief submitted on appeal, the AAO does not find sufficient information regarding the nature of the petitioner's clinic to assess whether the limited and general information provided regarding the duties of the proffered position incorporate the duties of a specialty occupation. The AAO acknowledges the petitioner's statement in the letter appended to the petition that it is "undergoing clinical research with some of our patients"; and counsel's assertion that the petitioner "is a

medical clinic attending patients from children to elderly patients specializing in Women's Health, Geriatrics, and Internal Medicine as well as conducting Clinical Research." However, this statement and counsel's assertion do not describe the petitioner's specific research projects and do not relate the specific duties and responsibilities to be performed by the beneficiary in the proffered position to the petitioner's particular business operations. The information of record is insufficient to establish that the petitioner conducts or will be conducting clinical research and that the beneficiary will be performing medical research that incorporates the theoretical and practical application of a body of highly specialized knowledge, associated with the 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.

The record lacks sufficient documentary evidence substantiating the petitioner's operations. The petitioner has failed to establish that it has a *bona fide* position for the conduct of research projects or that its organization requires the services of a medical research assistant or medical scientist. The record does not establish that the petitioner has a reasonable and credible offer of employment that is consistent with the needs of the petitioning organization. The deficiencies of the record preclude the approval of the petition. As the petitioner has not had an opportunity to address the deficiencies on appeal, the matter will be remanded for the director to render a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of the nature of the proffered position and whether the duties and responsibilities of the position as they relate to the petitioner's business establish the position as a specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.

ORDER: The director's July 26, 2007 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.