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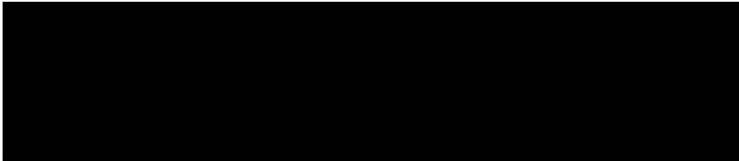
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 07 113 51117 Office: CALIFORNIA SERVICE CENTER Date: OCT 30 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

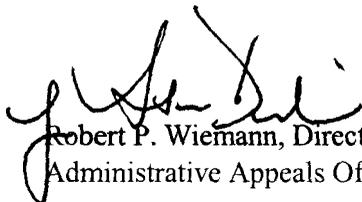
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, 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 provides health care services and personnel. It seeks to employ the beneficiary as a physical therapist. The petitioner, therefore, 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 the beneficiary's license or other evidence showing that the beneficiary is immediately eligible to engage in the proposed position, that of a physical therapist. The director found the limited permit submitted insufficient to establish that the beneficiary is qualified for the proposed position because the limited permit expired prior to the filing of the Form I-129 petition.

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)(v)(A), which relates to licensure for the H classification, states that if an occupation requires a licensure for an individual to fully perform the duties of the occupation, an alien seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

On appeal, counsel submits into the record a document entitled "Authorization to Test." Counsel also states that the petition should be approved because of the "severe shortage of physical therapists in the United States."

Upon review of the record, the petitioner has not established that the beneficiary is qualified to provide services as a physical therapist in the state of New York.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B, an appeal brief, and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

On appeal, counsel does not address the director's statements regarding the expired limited permit nor does counsel submit a valid limited permit for the beneficiary. The document in the record, "Authorization to Test," authorizes the beneficiary to take a physical therapy examination from January 9, 2008 to March 9, 2008 but does not provide a limited permit to the beneficiary. Counsel has not provided any evidence that the beneficiary is qualified to provide services as a physical therapist in the state of New York. CIS regulations

affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The AAO notes counsel's statement on appeal regarding the shortage of physical therapists in the United States. However, counsel has not provided evidence in support of his statement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS vs. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

As related in the discussion above, the petitioner has not established that the beneficiary is qualified to perform the duties of the proposed position. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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 appeal is dismissed. The petition is denied.