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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 07 147 51914 Office: VERMONT SERVICE CENTER Date: **OCT 30 2008**

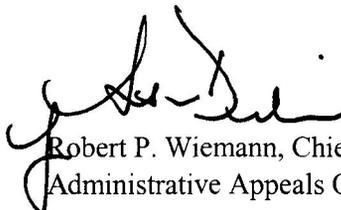
IN RE: Petitioner:
Beneficiary:

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 appeal will be summarily dismissed. The petition will be denied.

The petitioner is a nursing home and rehabilitation community management company responsible for the management of ten facilities throughout the United States. It seeks to employ the beneficiary as a physical therapist in a rotating position in various locations in the States of Arizona, Maryland, Virginia, and Texas. Accordingly, the petitioner endeavors to classify the beneficiary as a temporary nonimmigrant worker 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 September 19, 2007, the director denied the petition, determining that the petitioner had not provided evidence that the beneficiary is a licensed physical therapist in Arizona, Maryland, Virginia, and Texas or other evidence that she is immediately eligible to practice her profession in those States.

On October 19, 2007, the Vermont Service Center received a Form I-290B, Notice of Appeal, indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days. A review of the record reveals no subsequent submission of a brief. The AAO sent a facsimile to petitioner's counsel on October 10, 2008 requesting that a copy of any brief previously submitted be resubmitted within five days of the date of the facsimile. The AAO has not received any subsequent communication on this matter.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

On the Form I-290B, counsel asserts that in order to be licensed to practice physical therapy in Arizona, Maryland, Virginia, and Texas, the beneficiary must take and pass the National Physical Therapy Examination (NPTE) and that this examination is only offered in the United States. Counsel also notes that each of these States requires a social security number to process the NPTE application. Counsel contends that the beneficiary is unable to enter the United States or apply for a social security number without the H-1B classification. Counsel avers that the beneficiary has the foreign equivalent of a bachelor's degree in physical therapy and thus is eligible to perform the duties of the proffered position and has met the minimum requirement to apply for a State license. Counsel asserts that the director erred when not granting an H-1B classification for one year so that the beneficiary could obtain licensure.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and

- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In this matter, neither counsel nor the petitioner has submitted evidence that the beneficiary is licensed in any of the States where she would be practicing physical therapy. In addition, neither counsel nor the petitioner has provided certification from the appropriate credentialing organization (Foreign Credentialing Commission on Physical Therapy's (FCCPT)) as required under section 212(a)(5)(C) of the Act. Certification from the appropriate credentialing organization is the first step in verifying that the foreign health care workers' education, training, licensing, experience and English competency meet all statutory and regulatory requirements of section 212(a)(5)(C). The AAO observes that the petitioner, in response to the director's request for further evidence, indicated that the beneficiary was in the process of obtaining her certification. This is insufficient. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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). In addition, as stated in *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998), "[t]he AAO cannot consider facts that come into being only subsequently to the filing of the petition." As the petitioner did not provide the appropriate certification when the petition was filed, the record is insufficient to establish that the beneficiary has met the statutory and regulatory requirements of section 212(a)(5)(C) and thus is qualified to practice physical therapy. Without the FCCPT certification, the AAO does not reach the question of the beneficiary's lack of licensure in the States in which the petitioner would have her practice physical therapy.

As neither the petitioner nor counsel presents additional evidence or argument on appeal sufficient to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.