



U.S. Citizenship
and Immigration
Services

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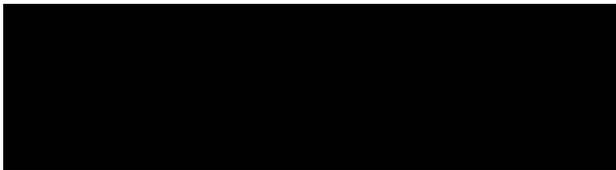
FILE: EAC 02 186 52024 Office: VERMONT SERVICE CENTER Date: **MAY 23 2007**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is an outpatient clinic that seeks to employ the beneficiary as a recreational therapist. The petitioner, therefore, seeks 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's May 16, 2002 request for additional evidence; (3) counsel's August 6, 2002 response to the director's request; (4) the director's August 12, 2002 denial letter; (5) the Form I-290B and supporting documentation, dated September 5, 2002; (6) the AAO's December 18, 2003 remand of the petition to the director; (7) the director's September 8, 2004 request for additional evidence; and (8) the director's April 18, 2005 notice of certification. No response to the notice of certification has been received. The AAO reviewed the record in its entirety before issuing its decision.

In its December 18, 2003 decision, the AAO determined that, although the proposed position did not require licensure, as had been stated by the director, the petitioner had not established that the proposed position qualifies for classification as a specialty occupation, or that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the AAO remanded the matter to the director for a determination on these issues, with certification to the AAO should his decision be adverse to the petitioner.

In his September 8, 2004 request for additional evidence, the director afforded the petitioner 84 days to submit evidence regarding these concerns. However, the petitioner did not respond. Accordingly, the director determined that the petitioner had failed to demonstrate that its proposed position qualifies for classification as a specialty occupation or that the beneficiary was qualified to perform the duties of a specialty occupation, and certified his decision to the AAO for review. The contents of these documents are part of the record and their contents need not be repeated here.

As the petitioner chose not to respond to the director's request for additional evidence or submit evidence to the AAO to rebut the findings of the director's notice of certification, it has not established that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), or that the beneficiary qualifies to perform the duties of the proposed position under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C). Therefore, the director's decision will be affirmed.

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 18, 2005 decision is affirmed. The petition is denied.

