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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 03 084 51554 Office: NEBRASKA SERVICE CENTER Date: JUN 08 2004

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 service center director 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 is a rehabilitation services and staffing business that seeks to employ the beneficiary as a physical therapist. The petitioner 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 because the petitioner has not demonstrated that the beneficiary holds a valid license to practice as a physical therapist immediately upon entry to the United States, or submitted evidence from the State of Indiana that the beneficiary is eligible for a temporary or permanent license after February 17, 2003. On appeal, the petitioner states that, although the beneficiary's license has expired, she is still eligible to take the exams and practice as a physical therapist.

Section 214(i)(2) of the Immigration and Nationality Act (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(v):

> If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1A nurse) 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(v)(C):

> In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a physical therapist. The petitioner's administrative manager indicated in his December 30, 2002 letter that a temporary licensed therapist is able to function as a licensed therapist, provided that her work is co-signed by the licensed therapist.

A review of the website at www.healthcrestenterprises.com reveals that the petitioner is a Missouri staffing agency for the healthcare industry. As such, the beneficiary would be performing duties at another worksite located in Indiana. Nowhere in the record, however, is there a comprehensive description of the beneficiary's proposed duties from an authorized representative of such worksite. Without such description, the petitioner has not demonstrated that the beneficiary would be working under the supervision of a licensed therapist.

Furthermore, the Temporary Physical Therapist License issued to the beneficiary by the Health Professions Bureau of the Physical Therapy Committee of Indiana expired on February 17, 2003, and the accompanying instructions indicate that this temporary license is void unless signed by the beneficiary in ink. As the beneficiary has provided an unsigned copy of her expired temporary license, it appears that such license is void. The beneficiary is unlicensed to practice as a physical therapist and therefore is not qualified to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment. Accordingly, the petitioner has not shown that the beneficiary qualifies to perform the duties of the proffered position. For this reason, the petition may not be approved.

Beyond the decision of the director, there record does not establish that the petitioner is the beneficiary's actual U.S. employer within the meaning of 8 C.F.R. § 214.2(h)(4)(ii). For example, the petitioner is located in Springfield, Missouri, whereas the beneficiary's place of employment on the certified LCA is listed as Indianapolis, Indiana. There is no evidence in the record establishing that the petitioner would have an employer-employee relationship with the beneficiary while she is working in another state. For this additional reason, the petition may not be approved.

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.