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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

D2

[redacted]

FILE: SRC 04 014 51200 Office: TEXAS SERVICE CENTER Date: JAN 03 2005

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.

Laurie J. O'Brien

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 is a provider of rehabilitative services. In order 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 on the basis that the petitioner had failed to establish that the beneficiary was presently qualified to perform services as a physical therapist in the State of Florida, the location of the proffered position. The director determined that Florida law would not allow the beneficiary to work as a physical therapist until after he had completed Florida's licensing examination requirements.

The issue before the AAO is whether the director erred by denying the petition because the beneficiary was not yet licensed as a physical therapist in Florida. Based upon the record's information that is summarized in the next paragraph, the AAO finds that the director's decision was correct.

By a June 9, 2003 "Report of Evaluation of Educational Credentials," the Foreign Credentialing Commission on Physical Therapy (FCCPT) certified its opinion that the beneficiary's foreign "education is substantially equivalent in content to a first professional degree in physical therapy in the United States." [1] On August 22, 2003, the Florida Department of Health authorized the beneficiary to take the National Physical Therapy Examination (NPTE) as a prerequisite to applying for Florida licensure as a physical therapist. On September 28, 2003, the Federation of State Boards of Physical Therapy (FSBPT), which administers the NPTE, issued the beneficiary written authorization to take the test. As the beneficiary does not have a social security number, the test authorization document authorized the beneficiary to take the test under an alternate identification number that the FSBPT provided as a substitute. Florida law allows for licensure of physical therapists only *after* the candidate has satisfactorily completed the NPTE and has been found otherwise fit for licensure. At the time of the petition the beneficiary had not taken the NPTE.

Pursuant to the regulation at 8 C.F.R. § 214.2(h)(v)(A), where, as here, a state or local license is required for an individual to fully perform the duties of an occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition. The CIS regulatory exceptions for situations where a jurisdiction allows for temporary but full performance of duties pending the award of a full license (*see* 8 C.F.R. §§ 214.2(h)(v)(B), (C), and (E)), do not apply to the facts in this proceeding. Because the beneficiary lacks the licensure required by 8 C.F.R. § 214.2(h)(v)(A), he is not

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[1] Citizenship and Immigration Services (CIS) recognizes the FCCPT as a proper authority for issuing healthcare worker certifications as required by section 212(a)(5)(C) of the Act, 8 U.S.C. § 1182(a)(5)(C). Memorandum from William R. Yates, Associate Director for Operations, CIS, Department of Homeland Security, *Final Regulation on Certification of Foreign Health Care Workers: Ajudicator's Field Manual Update AD 03-31* (September 22, 2003). These certifications only endorse a candidate as having the proper credentials for taking a licensing examination.

qualified to perform services in the pertinent specialty occupation. Accordingly, the director was correct to deny the petition for lack of necessary licensure.

It is noted that the petitioner mistrusts the director's statement that the beneficiary may be eligible for a B-1 or B-2 visa to come to the U.S. to take the NPTE, and that the petitioner should have him contact the American embassy or consulate nearest him for information. The petitioner is correct in understanding that a B-1 or B-2 visa would not authorize the beneficiary to work in the United States. However, the director was correct in informing the petitioner that an alien may legally take a licensure examination while present in the United States under a B-1 or B-2 visa. Once the State requirement has been complied with, and the beneficiary has successfully passed the licensure examination, CIS policy would allow the issuance of the H-1B visa if all that were lacking was the issuance of a social security number. Memorandum from Thomas E. Cook, Acting Assistant Commissioner, INS Office of Adjudications, *Social Security Cards and the Adjudication of H-1B Petitions,* HQ 70/6.2.8 (November 20, 2001).

As the petitioner has failed to establish that the beneficiary is qualified to serve as a physical therapist in the state where he would be employed, the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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