

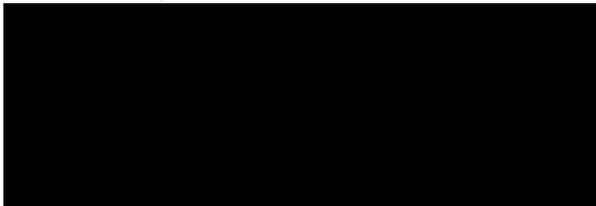
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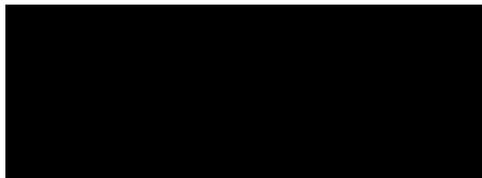
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FILE: WAC 02 186 53243 Office: CALIFORNIA SERVICE CENTER Date: JAN 18 2005

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.

*for* *Michael T. Kelly*  
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 treats urological diseases. It seeks to employ the beneficiary as a clinical dietician. 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 because the beneficiary is not qualified to perform the duties of a clinical dietician. On appeal, counsel states that the beneficiary is qualified for the proffered position of dietetic technician, and submits additional evidence.

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. 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.

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

The petitioner is seeking the beneficiary's services as a clinical dietician. In an undated letter, the petitioner indicated that the beneficiary is qualified for the position based upon her bachelor's degree in nutrition and dietetics from Ago Medical and Educational Center in the Philippine Islands.

The director determined that the beneficiary was not qualified to perform the duties of a clinical dietician because she did not possess proper licensure. According to the director, the regulation at 8 C.F.R. § 214.2(h)(4)(v) provides that if an occupation requires a state or local license for a person to fully perform its duties, the alien seeking H classification must have that license prior to the petition's approval.

On appeal, counsel submits a letter from Guam Memorial Hospital Authority, and claims it more accurately identifies the title of the proffered position as "dietetic technician" rather than "clinical dietician." Counsel states that a dietetic technician does not require licensure, and submits job announcements and evidence from the Commission on Dietetic Registration about dietetic technician jobs. Counsel contends that the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) does not prohibit the beneficiary from performing duties of a dietetic technician in Guam, and claims that 8 C.F.R. § 214.2(h)(4)(v) does not apply to a dietetic technician job in Guam.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

On appeal, counsel seeks to change the position's title to "dietetic technician," and states that a person does not require licensure to perform the duties of a dietetic technician in Guam. However, 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). On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made on appeal, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Accordingly, the proffered position's title remains as "clinical dietician."

CIS often looks to the Department of Labor's *Occupational Outlook Handbook (Handbook)* when determining the licensing, training, and educational requirements for positions. The *Handbook* states that a clinical dietician requires at least a bachelor's degree in dietetics, foods and nutrition, food service systems management, or a related area. The *Handbook* further states:

Of the 46 States and jurisdictions with laws governing dietetics, 30 require licensure, 15 require certification, and 1 requires registration. The Commission on Dietetic Registration of the American Dietetic Association (ADA) awards the Registered Dietitian credential to those who pass a certification exam after completing their academic coursework and supervised experience. Because practice requirements vary by State, interested candidates should determine the requirements of the State in which they want to work before sitting for any exam.

The evidentiary record reveals that the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The beneficiary does possess a foreign degree determined to be equivalent to a bachelor's degree in nutrition and dietetics awarded by a regionally accredited university in the United States. As already discussed, the *Handbook* reports that of the 46 states and jurisdictions with laws governing dietetics, 30 require licensure, 15 require certification, and 1 requires registration. The letter from Guam Memorial Hospital Authority indicates that the clinical dietitian position requires licensure. No evidence in the record demonstrates that the beneficiary possesses proper licensure to practice as a clinical dietitian in Guam. Therefore, the petitioner cannot establish that the beneficiary is qualified to perform services as a clinical dietitian pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), which requires a person to hold an unrestricted state license, registration, or certification authorizing him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment.

The AAO notes that the director correctly concluded that the regulation at 8 C.F.R. § 214.2(h)(4)(v)(A) provides that if an occupation requires a state or local license for a person to fully perform its duties, the alien seeking H classification in that occupation must have that license prior to the petition's approval to be found qualified to enter the United States and immediately engage in employment in the occupation. Furthermore, no evidence in the record demonstrates that a temporary license is available that would allow the beneficiary to perform the duties of the occupation without a permanent license. 8 C.F.R. § 214.2(h)(4)(v)(B). Nor is there evidence in the record that would show that Guam allows a person to fully practice as a clinical dietitian under the supervision of licensed senior or supervisory personnel in the occupation. 8 C.F.R. § 214.2(h)(4)(v)(C).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.