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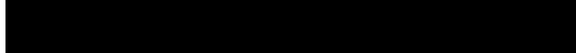
U.S. Citizenship
and Immigration
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FILE: EAC 04 094 51293 Office: VERMONT SERVICE CENTER Date: **NOV 01 2005**

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:

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

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 provides home healthcare, staffing, and medical equipment. It seeks to employ the beneficiary as a physical therapist. 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).

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.

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

The director denied the petition, concluding that the beneficiary is not qualified for the proffered position because the record indicates that the beneficiary does not possess a license to provide services as a physical therapist in Pennsylvania, which is the intended state of employment.

On appeal, the petitioner states that the beneficiary could not obtain licensure as a physical therapist in Pennsylvania, and that in the H-1B petition filed on February 11, 2004, the beneficiary's place of employment should have indicated the state of Indiana instead of Pennsylvania. The petitioner submits additional evidence: a new Form I-129 petition and a labor condition application (LCA) reflecting Indiana as the beneficiary's place of employment, and the beneficiary's license to practice physical therapy in Indiana.

Upon review of the record, the petitioner has failed to establish that the beneficiary possesses proper licensure to provide services as a physical therapist in Pennsylvania.

On appeal, the petitioner submits a Form I-129 petition designating Indiana as the beneficiary's place of employment. In this proceeding, the AAO will consider the beneficiary's eligibility under the original petition filed on February 11, 2004, as the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The submitted Form I-129 H-1B petition (filed on February 11, 2004), the LCA with the ETA case number of I-04035-0934697, and the petitioner's January 12, 2004 offer letter reflect that the beneficiary will provide services as a physical therapist in Pennsylvania. In a May 20, 2004 letter, the petitioner states that the beneficiary does not possess licensure to provide services as a physical therapist in Pennsylvania. The AAO

finds that this evidence establishes that the beneficiary is not qualified to provide services as a physical therapist in Pennsylvania.

The AAO notes that the petitioner is inconsistent about the beneficiary's actual place of employment, and observes that the petitioner's letterhead does not reflect that it has a branch office in Indiana. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proposed 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.