



**U.S. Citizenship
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APR 04 2007

FILE: WAC 05 169 51020 Office: CALIFORNIA SERVICE CENTER Date:

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:

[Redacted]

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, Chief
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 an adult day health center (ADHC) and seeks to employ the beneficiary as a social worker. 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 beneficiary is not qualified to perform the services of the offered specialty occupation. On appeal, counsel submits a brief stating that the proffered position does not require a license and the beneficiary is qualified to perform the duties of the proffered position.

The issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) 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, the 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)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

As previously stated, the director denied the petition because the beneficiary is not licensed to work as a social worker in California. Thus, it is implicit in the director's decision that the proffered position qualifies as a specialty occupation. The AAO agrees. The Department of Labor's *Occupational Outlook Handbook* (*Handbook*) notes that a bachelor's degree in social work is the most common minimum requirement to qualify for a job as a social worker; however, majors in psychology, sociology, and related fields may qualify for some entry-level jobs, especially in small community agencies. Although a bachelor's degree is sufficient for entry into the field, an advanced degree has become the standard for many positions. A master's degree in social work is typically required for positions in health settings and is required for clinical work as well. The *Handbook* further notes that all States and the District of Columbia have licensing, certification, or registration requirements regarding social work practice and the use of professional titles. The offered position qualifies as a specialty occupation.

The issue before the AAO is whether the beneficiary is qualified to perform the duties of a social worker in the

petitioner's business environment. The petitioner states that a license is not required to perform the duties of the proffered position. The AAO does not agree.

In stating that the proffered position does not require a license, the petitioner refers to California state regulations for ADHC's which defines a "licensed professional" as a person licensed in California to provide medical care or therapy. The regulation states that "this includes physicians and surgeons, physician assistants, nurse practitioners, registered nurses, licensed vocational nurses, psychiatric technicians, physical therapists, occupational therapists and respiratory therapists who are operating within their scope of practice." The referenced regulation does not state that social workers do not require licensing when employed by an ADHC. Further, the beneficiary in this instance would be working as a social worker and would not be providing medical care or therapy. The referenced regulation is, therefore, inapplicable to the duties of the proffered position and does not support the petitioner's assertion that a social worker in this instance need not be licensed.

The petitioner also provided copies of Adult Day Health Care licensing regulations from the California Code of Regulations. Under § 78097 of these regulations, a "social worker" is defined as a person who is licensed as a clinical social worker by the California Board of Behavioral Science Examiners, or a person who has a master's degree from an accredited school of social work. Section 78303 of these regulations indicates that a social worker is a member of a multidisciplinary team for client assessment purposes consisting of the social worker, a staff or attending physician, a registered nurse, an occupational therapist and a physical therapist. Section 78339 of the regulations states that the ADHC shall provide social services to assist participants and their families to solve medical social problems that arise as result of the participant's disability, and that the medical social worker shall be a full-time employee of the adult day health center. While all social workers need not be licensed in California, those providing clinical social work are required to be licensed. Clinical social work is defined by section 4996.9 of the California Business and Professions Code as follows:

4996.9. The practice of clinical social work is defined as a service in which a special knowledge of social resources, human capabilities, and the part that unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive social adjustments. The application of social work principles and methods includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with individuals, families, or groups; providing information and referral services; providing or arranging for the provision of social services; explaining or interpreting the psychosocial aspects in the situations of individuals, families, or groups; helping communities to organize, to provide, or to improve social or health services; or doing research related to social work.

Psychotherapy, within the meaning of this chapter, is the use of psychosocial methods within a professional relationship, to assist the person or persons to achieve a better psychosocial adaptation, to acquire greater human realization of psychosocial potential and adaptation, to modify internal and external conditions which affect individuals, groups, or communities in respect to behavior, emotions, and thinking, in respect to their intrapersonal and interpersonal processes.

In its letter of May 3, 2005, the petitioner lists the beneficiary's duties. As stated by the petitioner, a portion of the beneficiary's duties includes providing a full range of psychotherapy counseling, case management and social work services to individual program participants, and providing individual, group and family therapy to aid in overcoming dependencies, recover from illness, and adjust to family life. Thus, the social services to be provided by the beneficiary is by definition clinical social work which requires that the beneficiary be licensed by the state of California. The record does not establish that the beneficiary has a license to practice clinical social work in California. The beneficiary is, therefore, not qualified to perform the duties of the proffered position.

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 and the appeal shall accordingly be dismissed.

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