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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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Date: MAR 20 2012 Office: VERMONT SERVICE CENTER FILE: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Vermont Service Center denied the nonimmigrant visa petition on October 21, 2009. The petitioner filed a timely motion to reopen and reconsider on November 23, 2009. The service center director denied the motion and found that the record did not overcome the grounds for denial. Therefore, on January 28, 2010, the director, in denying the motion, affirmed the previous decision to deny the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner describes itself as a special education school established in 1992. It seeks to employ the beneficiary as a teacher (special education) 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, concluding that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation. Specifically, the director found that the petitioner failed to establish that the beneficiary is licensed to work as a special education teacher in Virginia or provide other evidence that she is immediately eligible to practice her profession in Virginia.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's RFE; (4) the director's denial letter; (5) the petitioner's motion; (6) the director's decision to deny the motion and affirm the initial decision to deny the petition; and (7) the petitioner's appeal filed on Form I-290B with counsel's brief and evidence. The AAO reviewed the record in its entirety before reaching its decision.

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

The statutory and regulatory framework that the AAO must apply in its consideration of the evidence of the beneficiary's qualification to serve in a specialty occupation follows below.

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.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

(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 are 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.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require 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;[1]

(4) Evidence of certification or registration from a nationally-recognized

[1] The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

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. . . .

In addition, pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(v)(A), 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-1C 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)(B), if a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

Where licensure is required in any occupation, 8 C.F.R. § 214.2(h)(4)(v)(E) specifies that the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. This regulation also provides that an alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year, unless he or she has (1) obtained a permanent license in the state of intended employment, or (2) continues to hold a temporary license valid in the same state for the period of the requested extension.

It is U.S. Citizenship and Immigration Services (USCIS) policy to provisionally approve H-1B petitions for a one-year period where the only impediment to required licensure is the overseas alien beneficiary's lack of a social security number. *See* 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) (hereinafter referred to as the Cook Memo). The Cook Memo's continuing applicability is acknowledged in the Memorandum from Donald Neufeld, Deputy Associate Director, Domestic Operations, *Adjudicator's Field Manual Update: Accepting and Adjudicating H-1B Petitions When a Required License Is Not Available Due to State Licensing Requirements Mandating Possession of a Valid Immigration Document as Evidence of Employment Authorization,* HQISD 70/6.2.8 (March 21, 2008) (hereinafter referred to as the Neufeld Memo). The Neufeld Memo amends the *Adjudicator's Field Manual (AFM)* to instruct adjudicators to approve an H-1B petition for a one-year validity period if the object of the petition is a specialty occupation that requires licensure and the beneficiary has met all of the licensing jurisdiction's licensure requirements except USCIS

approval of the H-1B petition. In this matter, however, and for the reasons discussed in greater detail below, the record of proceedings fails to establish that the lack of a social security number or a valid immigration document are the only impediments to the beneficiary's attaining the licensure required to fully perform the duties of a teacher (special education) in the Commonwealth of Virginia. Thus, the referenced policy is irrelevant to this appeal.

As previously stated, the director denied the petition because the petitioner failed to demonstrate that the beneficiary is licensed to work as a teacher (special education) in Virginia or provide other evidence that she is immediately eligible to practice her profession in Virginia.

The issue before the AAO is whether the beneficiary is qualified to work in a specialty occupation, which requires at least a bachelor's degree or equivalent in a specific specialty. On appeal, counsel for the petitioner states that the beneficiary is prima facie eligible for a provisional license as a teacher (special education). Specifically, while counsel acknowledges that, according to the *Virginia Licensure Regulations for School Personnel* at 8 VAC20-22-90(C)(1), the beneficiary must first be employed by a Virginia public or nonpublic school as a special educator and have the recommendation of the employing educational agency in order to apply for a provisional license, he claims that the beneficiary has met all requirements for the provisional special education teaching license except for this first requirement. Counsel indicates that, as this is the only impediment to licensure, the Neufeld Memo has been satisfied and the H-1B petition should be approved. Counsel submits a copy of the *Virginia Licensure Regulations for School Personnel* in support of his assertions.

The AAO takes administrative notice of the regulations governing the issuance of a provisional license in Virginia as provided under 8VAC20-22-90 - Alternate routes to licensure from the *Virginia Licensure Regulations for School Personnel* (revised January 19, 2011). The regulation at 8VAC20-22-90 provides, in pertinent part, as follows:

> C. Alternate route in special education. The Provisional License is a three-year nonrenewable teaching license issued to an individual employed as a special education teacher in a public school or a nonpublic special education school in Virginia who does not hold the appropriate special education endorsement. This alternate route to special education is not applicable to individuals employed as speech pathologists. To be issued the Provisional License through this alternate route, an individual must:
>
> 1. Be employed by a Virginia public or nonpublic school as a special educator and have the recommendation of the employing educational agency;
>
> 2. Hold a baccalaureate degree from a regionally accredited college or university;
>
> 3. Have an assigned mentor endorsed in special education; and
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> 4. Have a planned program of study in the assigned endorsement area, make

> progress toward meeting the endorsement requirements each of the three years of the license, and have completed coursework in the competencies of foundations for educating students with disabilities and an understanding and application of the legal aspects and regulatory requirements associated with identification, education, and evaluation of students with disabilities. A survey course integrating these competencies would satisfy this requirement. The Provisional License through this alternate route shall not be issued without the completion of these prerequisites.

Virginia Licensure Regulations for School Personnel (revised January 19, 2011), [redacted] (accesses March 7, 2012).

The AAO finds that the petitioner has failed to establish that the beneficiary is qualified for a provisional license in all respects. For instance, the petitioner has not provided documentary evidence to establish that the beneficiary will be assigned a mentor endorsed in special education. On appeal, the petitioner states that the beneficiary will be mentored by [redacted], a lead teacher endorsed in special education who possesses a master's degree. However, the petitioner does not provide evidence, such as a copy of her teaching license, to establish that she is endorsed in special education. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). In addition, the petitioner does not provide evidence to establish that the beneficiary has a planned program of study in the assigned endorsement area.

Therefore, contrary to the claims of counsel, the petitioner has failed to demonstrate that the beneficiary is qualified to perform the duties of the proffered specialty occupation but for the approval of the H-1B petition. The director's decision is affirmed and the petition will be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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