



U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: APR 09 2007
SRC 04 121 51659

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a rehabilitation business organized as a corporation. It seeks to employ the beneficiary permanently in the United States as a physical therapist. The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.10(a), commonly referred to as Schedule A. The director determined that the petitioner has failed to establish that the beneficiary meets the requirements of 20 C.F.R. § 656.22(l)(c)(1). Specifically the director found that there was no a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment which is Texas, stating that the alien is qualified to take that State's written licensing examination for physical therapists, and, the beneficiary has not submitted evidence to show that he has already the necessary state license. The director denied the petition accordingly.

On appeal, counsel submits additional evidence.

The Director, United States Employment Service (Director), has determined that there are not sufficient United States workers who are able, willing, qualified, and available for the occupations listed below on Schedule A and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in Schedule A occupations. An alien seeking a labor certification for an occupation listed on Schedule A may apply for that labor certification pursuant to 20 C.F.R. § 656.22, Schedule A, (a) Group I: (1) Persons who will be employed as physical therapists, and who possess all the qualifications necessary to take the physical therapist licensing examination in the State in which they propose to practice physical therapy.

The regulation at 20 C.F.R. § 656.22(c) states that an employer seeking labor certification under Group I of Schedule A shall file, as part of its labor certification application, documentary evidence of the following:

- (1) An employer seeking Schedule A labor certification for an alien to be employed as a physical therapist (§ 656.10(a)(1) of this part) shall file as part of its labor certification application a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment, stating that the alien is qualified to take that State's written licensing examination for physical therapists. Application for certification of permanent employment as a physical therapist may be made only pursuant to this § 656.22 and not pursuant to §§ 656.21, 656.21a, or 656.23 of this part.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for granting preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The regulation at 8 C.F.R. § 204.5(1)(2) states, in pertinent part:

“Professional means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.”

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) states, in pertinent part:

Professionals. If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a

baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

The I-140 petition was filed March 24, 2004. It required that the applicant possess a Bachelor of Science degree (B.S.) in the major field of study, Physical Therapy. Along with the petition, the petitioner submitted copies of the following documents: an U.S. Department of Labor, Form ETA 750 A/B Application for Alien Employment Certification dated December 29, 2003; a notice of filing and posting of the Application for Alien Employment Certification;¹ a credentials report from the International Education Research Foundation Inc. that the beneficiary has a degree comparable to the U.S. Bachelor of Science in Physical Therapy; the beneficiary's resume; the beneficiary's diploma (Bachelor of Science in Physical Therapy) and college transcripts; a certification from St. Joseph Physical Therapy and Rehabilitation Clinic that the beneficiary was an assistant therapist from February 2000 to March 2002; a certification from the Fatima Medical Science Foundation Inc, Valenzuela City, Republic of the Philippines; approximately 18 certificates of attainment in continuing medical education; and, the beneficiary's driver's license and birth certificate.

Because the Director determined the evidence submitted with the petition was insufficient, *inter alia*, to demonstrate the beneficiary is qualified to take that State of Texas' written licensing examination for physical therapists, and, the beneficiary had not submitted evidence to show that he has already the necessary state license, the Director requested on December 8, 2004, pertinent evidence of same.

In response to the request for evidence as above recited, the petitioner submitted a letter stating the beneficiary had received an authorization to test dated August 19, 2004, from the Federation of State Boards of Physical Therapy, Alexandria, Virginia, stating that the beneficiary may sit for an examination between August 20, 2004, and October 19, 2004. No evidence was submitted that the beneficiary in fact took this exam.

The director denied the petition on April 8, 2005. The director determined that the petitioner has failed to establish that the beneficiary meets the requirements of 20 C.F.R. § 656.22(l)(c)(1). Specifically the director found that there was no a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment which is Texas, stating that the alien is qualified to take that State's written licensing examination for physical therapists, and, the beneficiary has not submitted evidence to show that he has already the necessary state license.

On appeal, counsel states the following will happen at a future time: the beneficiary will take a qualifying licensing examination in California, and, then the beneficiary will apply for reciprocity for the Texas Physical Therapy Board and complete the requirements under the supervision of a licensed physical therapist in Texas.

Counsel has submitted copies of the following documents to accompany the appeal statement: the Notice of Decision, and, a letter from the Physical Therapy Board of California, Sacramento, California, dated April 6, 2004, addressed to the beneficiary at [REDACTED] stating, in part, that the beneficiary is authorized to test. According to the terms of the letter the beneficiary's application would remain on file for one year from April 6, 2004. Despite the passage of almost three years, there is no evidence submitted that the beneficiary in fact took this exam.

¹ The notice of filing and posting of the Application for Alien Employment Certification is defective on its face as it requires a Baccalaureate Degree in Physical Therapy *and one year of experience in the related field*. The subject Application for Alien Employment Certification has no such experience requirement. Thus, the posting notice fails to comply with the regulation at 20 C.F.R. § 656.20(g)(8) requiring that the notice contain a description of the job for Schedule A applications.

As a preface to the following discussion, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The facts as submitted by the petitioner were that at the date of filing the petition, March 24, 2004, the beneficiary did not possess the necessary state license to practice physical therapy in the state of Texas, nor did the petitioner submit a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment which is Texas, stating that the beneficiary is qualified to take that State's written licensing examination for physical therapists.

The petitioner has not come forward with substantive evidence according to 20 C.F.R. § 656.22 (c) to demonstrate compliance with the above regulatory requirements from the date of filing of the I-140 petition, March 24, 2004.

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 met that burden.

ORDER: The appeal is dismissed.