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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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APR 25 2007

FILE: LIN 05 232 51274 Office: NEBRASKA 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:

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 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 a non-profit acute care facility and seeks to employ the beneficiary as a doctor. 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 stating that the beneficiary does not qualify to perform the duties of the proffered position as he has not passed the Federation licensing examination (FLEX) or an equivalent recognized test credential examination. On appeal, counsel submits a brief and states that the beneficiary is qualified to perform the duties of the proffered position. Specifically, counsel states that the beneficiary is a medical school graduate from Canada, is licensed to practice medicine in Illinois, and is licensed to practice medicine in Canada after having completed licensing requirements of the Medical Council of Canada (LCMC).

Implicit in the director's decision is that the proffered position qualifies as a specialty occupation, The sole basis for denial is that the beneficiary is not qualified to perform the duties of the position. Thus, the only issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of the offered position.

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.

The regulation at 8 C.F.R. § 214.2(h)(4)(viii) provides that an H-1B physician must be licensed by the state in which he/she will practice, and be authorized to practice medicine in a foreign country or be a graduate of a U.S. medical school. Additionally, the regulation provides that if a foreign physician will be providing direct medical care, the physician must have passed the Federation licensing examination (FLEX) or an equivalent recognized test credential examination as determined by the Secretary of Health and Human Services (HHS). On September 16, 1992, HHS published a notice in the Federal Register, Vol. 57, No. 180, stating that parts 1, 2, and 3 of the National Board of Medical Examiners (NBME) certifying examinations and Steps 1, 2, and 3 of the U.S. Medical Licensing Examination (USMLE) are equivalent to the FLEX. See Memorandum, [REDACTED], Chief, Nonimmigrant Branch (August 4, 1994). The regulation further requires that the physician have competency in oral and written English, as demonstrated by passage of the English language proficiency test given by the Educational Commission for Foreign Medical Graduates (ECFMG).

The record does not establish that the beneficiary has passed steps 1, 2 and 3 of the USMLE, or the FLEX, or parts 1, 2 & 3 of the NBME. Thus, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. The examinations taken by the beneficiary to obtain LCMC licensing in Canada have not been determined by the Secretary of Health and Human Services to be an equivalent recognized test credential examination to the federal licensing examination.

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 and the appeal shall accordingly be dismissed.

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