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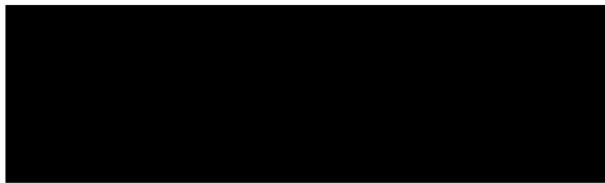
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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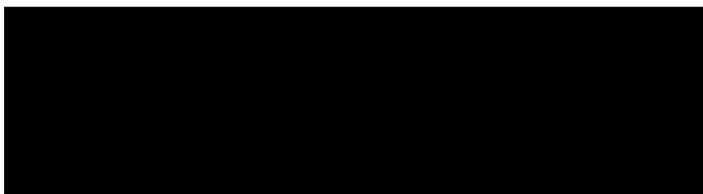


FILE: LIN 05 235 54341 Office: NEBRASKA SERVICE CENTER Date: **JUL 30 2007**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition. 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 physical and occupational therapy services to the residents of skilled nursing facilities in the State of Illinois and in St. Louis, Missouri. It seeks to employ the beneficiary as a physical therapist in Moline, Illinois. Accordingly, the petitioner endeavors to classify the beneficiary as a temporary nonimmigrant worker 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 record of proceeding before the AAO contains: (1) the August 8, 2005 Form I-129 with supporting documentation; (2) the director's November 14, 2005 request for further evidence (RFE); (3) counsel's January 26, 2006 response to the director's RFE; (4) the director's March 7, 2006 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner submitted the petition on August 8, 2005. The petitioner included a description of the beneficiary's duties in its July 28, 2005 letter in support of the petition; an evaluation of the beneficiary's foreign educational credentials prepared by the Foreign Credentialing Commission on Physical Therapy (FCCPT); and documentation of the beneficiary's foreign education and foreign license. The FCCPT evaluation indicated that the beneficiary's professional education is substantially equivalent to a U.S. baccalaureate degree in physical therapy.

In response to the director's RFE regarding the beneficiary's licensure to practice as a physical therapist in the State of Illinois, the petitioner provided a December 6, 2005 letter from the Illinois Department of Financial and Professional Regulation indicating the beneficiary's application to sit for the National Physical Therapy Examination (NPTE) had been approved.

On March 7, 2006, the director denied the petition determining that the December 6, 2005 Illinois Department of Financial and Professional Regulation letter is insufficient to demonstrate the beneficiary had authority to practice as a physical therapist in the State of Illinois.

On appeal, counsel for the petitioner asserts that Illinois law allows first time candidates making application for examination to practice physical therapy under direct on-site supervision once the application for physical therapy licensure examination application has been received and approved. Counsel provides the pertinent Illinois law at Section 90/2(2) of the Illinois Physical Therapy Act of 1987 (225 ILCS 90). Counsel asserts that as the beneficiary's application to sit for the NPTE had been accepted and approved, the beneficiary is eligible to practice physical therapy in the State of Illinois under direct supervision of a licensed physical therapist.

Counsel's assertions are not persuasive. The record does not contain sufficient information to establish that the beneficiary was eligible to practice physical therapy in the State of Illinois when the petition was filed. The Illinois Department of Financial and Professional Regulation approving the beneficiary's application to sit for the NPTE is dated December 6, 2005, almost four months after the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*,

17 I&N Dec. 248 (Reg. Comm. 1978). In addition, as stated in *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998), "[t]he AAO cannot consider facts that come into being only subsequently to the filing of the petition." The petitioner has not established that as of the date of filing the petition on August 8, 2005, the beneficiary was qualified to practice physical therapy in the State of Illinois. For this reason, the petition will be denied.

Moreover, the Illinois law cited by counsel indicates that first time candidates applying to practice physical therapy in the State of Illinois must do so under the supervision of a licensed physical therapist. The petitioner has not presented documentary evidence of the licensed physical therapist who would act as the beneficiary's on-site supervisor. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record is thus deficient in establishing that the beneficiary could comply with the Illinois law regarding licensure of physical therapists. For this additional reason, the record is insufficient to establish the beneficiary's eligibility to practice physical therapy when the petition was filed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 361. The petitioner has not sustained that burden.

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