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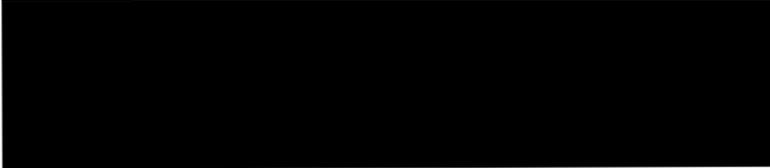
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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NOV 16 2009

FILE: EAC 07 142 52548 Office: VERMONT 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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.

On the Form I-129, the petitioner states that it is in the business of “education,” that it was established in 2001, that it employs 95 persons, and that it has a gross annual income of over \$4,000,000, and a net annual income of \$62,106. It seeks to employ the beneficiary as a teacher. Accordingly, 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).

On September 27, 2007, the director denied the petition, determining that the record did not include evidence that the beneficiary is a licensed teacher in Georgia, or other evidence that the beneficiary is immediately eligible to practice her profession in Georgia. The director specifically considered the July 25, 2007 letter issued to the beneficiary by the Professional Standards Commission of the State of Georgia indicating that the beneficiary had been found eligible for a nonrenewable teaching certificate, level 5, in chemistry education (6-12). The director also noted that the letter indicated that the beneficiary was required to submit a new application along with the “Employer Assurance Form” in order to receive a nonrenewable (teaching) certificate.

On appeal, counsel for the petitioner submits a brief, re-submits the July 25, 2007 letter issued to the beneficiary by the Professional Standards Commission of the State of Georgia, notes that the required application form is enclosed, and also submits advertisements for teaching positions in the State of Georgia. The advertisements indicate that a certified application form, a resume, two references, a copy of “certificate,” and a copy of transcripts are necessary for a complete application, and that a candidate must hold or be eligible to hold a Georgia certificate in the applicable grades.

Counsel asserts that the July 25, 2007 letter issued to the beneficiary by the Professional Standards Commission of the State of Georgia, previously provided to the director in response to his request for further evidence (RFE), shows that the State of Georgia had determined that the beneficiary is eligible to teach chemistry to children in the sixth to twelfth grades. Counsel indicates that the “required application form” is enclosed and that the advertisements submitted show that “the certification” is acceptable for the position. Counsel also contends that the State of Georgia requires that a candidate provide their social security number when applying for certification/licensing, thus the beneficiary’s presence in the United States is required to obtain this certification. The AAO acknowledges that the record includes a May 10, 2006 letter from the Director of Employment Services of Fulton County Schools in Georgia indicating that Fulton County Schools has a contract with the petitioner and noting that international teachers’ presence in the United States is required to obtain a social security number before they may be issued an Exchange Teacher Certificate.

The AAO observes that the record on appeal does not include “the required application form,” and does not include the required “Employer Assurance Form.” Thus, the petitioner has not provided the documentary evidence necessary to complete the beneficiary’s application for a nonrenewable teaching certificate in Georgia. The AAO also observes that the advertisements submitted indicate

that the candidate for a Georgia teaching position must hold or be eligible to hold a Georgia certificate in the applicable grades but also require additional documentation to complete the application for a teaching position. The record before the AAO does not include the complete documentation. 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 AAO acknowledges that a Form I-129 petition may be approved for a period of 1-year provided that the only obstacle to obtaining state licensure is the fact that the alien cannot obtain a social security card from the Social Security Administration. However, petitions filed for these aliens must contain evidence from the state licensing board clearly stating that the only obstacle to the issuance of state licensure is the lack of a social security card. In addition, the petitioner must establish that all other regulatory and statutory requirements for the occupation have been met. The petitioner in this matter has not provided a statement from the state licensing board, as the only letter in the file regarding this issue is from the Director of Employment Services in the Fulton County Schools system. Moreover, the petitioner has not provided the requisite documentation establishing that the beneficiary has supplied the necessary information to the State of Georgia to be eligible to receive a nonrenewable teaching certificate save for the possession of a social security number.

In this matter, the record lacks the necessary documentation to establish that the beneficiary is eligible or would be immediately eligible to practice her profession upon entering the United States. The AAO disagrees with counsel's contention that the only obstacle for the beneficiary to complete the application process is obtaining a social security number. As the director found, the petitioner has not provided the required new application form along with the "Employer Assurance Form" for review. Further, the record does not contain the requisite statement from the state licensing board regarding the requirement of a social security number. Thus, the record is insufficient to establish that the beneficiary was qualified to teach in the State of Georgia when the petition was filed.

Beyond the decision of the director, the record in this matter does not include a Form ETA 9035E, Labor Condition Application (LCA) certified by the Department of Labor for the State of Georgia. 8 C.F.R. § 214.2(H)(4)(I)(b)(1). The record only includes an LCA certified by the Department of Labor for the State of South Carolina. For this additional reason, the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petition will be denied and the appeal dismissed for the above stated reasons. 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. Thus, the regulations mandate the dismissal of the appeal.

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