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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 17 2005

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, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be withdrawn. The petition will be approved.

The petitioner is engaged in the business of home health care that seeks to employ the beneficiary as a rehabilitation services coordinator. The petitioner, therefore, 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 determined that the beneficiary is not qualified to perform in the specialty occupation. The director found that the beneficiary does not possess a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. The beneficiary is in possession of a bachelor's degree in physical therapy. The director indicated that the petitioner had failed to establish that the beneficiary has at least five years of specialized training, and/or progressive 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. The director noted that the beneficiary has not passed a licensing examination, nor has he completed a State-approved training program.

The only issue to be considered is whether the beneficiary qualifies to perform the duties of the proffered position.

Pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(C), in order to qualify to perform services in a specialty occupation, a beneficiary must:

- (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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a rehabilitation services coordinator. Evidence of the beneficiary's qualifications includes: the Form I-129; the attachments accompanying the Form I-129; the

company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the petitioner submitted a copy of the beneficiary's bachelor of science degree in physical therapy from the Fatima College of Physical Therapy located in ██████████ Philippines dated October 17, 1998 as well as a copy of his transcript from the school. Additionally, the petitioner submitted an educational evaluation from Foundation for International Services, Inc. which indicated that the beneficiary had received the equivalent of a bachelor's degree in physical therapy from an accredited college or university in the United States. The petitioner submitted a copy of a letter from Advance P.T. & Rehab Center located in Quezon City, Philippines that indicated that the beneficiary was employed from November 1998 until the date of the letter, December 19, 1999 as a clinical supervisor.

The director requested a copy of the beneficiary's permanent California Physical Therapist License. Counsel refers to the Department of Labor's *Occupational Outlook Handbook (Handbook)* under Health Services Managers and notes: "All states and the District of Columbia require nursing home administrators to have a bachelor's degree, pass a licensing exam, complete a State-approved training program, and pursue continuing education. A license is not required in other areas of health services management." Furthermore, counsel contends that this is sufficient for the position offered as a clinical department head.

A review of the *Handbook* reveals:

. . . . a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the department level within healthcare organizations. . . . [f]or clinical department heads, a degree in an appropriate field and work experience may be sufficient for entry. . . ."

A review of the record establishes that the beneficiary has the equivalent of a bachelor's degree in physical therapy and related work experience and that the proffered position is that of medical and health services manager. Thus the requirement of 8 C.F.R. § 214.2(h)(iii)(C)(2) has been complied with.

The beneficiary is, therefore, qualified to perform the duties of the offered position.

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 sustained that burden. Accordingly, the decision of the director will be withdrawn and the appeal will be sustained.

**ORDER:** The director's May 11, 2004 decision is withdrawn. The petition is approved.