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U.S. Citizenship  
and Immigration  
Services



D2

FILE: WAC 04 169 52465 Office: CALIFORNIA SERVICE CENTER Date: DEC 15 2005

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an adult day care facility, with 33 employees. It seeks to employ the beneficiary, previously granted H-1B status from February 2, 2004 to November 20, 2006, as a social 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 director denied the petition because he found the record did not establish the beneficiary as qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B, with counsel's brief and new and previously submitted evidence. The AAO reviewed the record in its entirety before reaching its decision.

Although the director's denial did not address whether the proffered position was that of a social worker and imposed a degree requirement on the beneficiary, the AAO's review of the record finds that the petitioner has satisfied the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The duties of the proffered position, as described by the petitioner in its May 24, 2004 letter of support, identify the proffered position as that of a social worker and the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the resource on which the AAO relies for information regarding the educational requirements of particular occupations, states the following at page 200 of the 2004-2005 edition:

A bachelor's degree in social work (BSW) degree is the most common minimum requirement to qualify for a job as a social worker; however, majors in psychology, sociology, and related fields may be adequate to qualify for some entry-level jobs, especially in small community agencies . . . .

Therefore, the only issue before the AAO is whether the beneficiary is qualified to perform the duties of the proffered position. In determining whether an alien is qualified to perform the duties of a specialty occupation, Citizenship and Immigration Services (CIS) looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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 beneficiary holds a 2002 U.S. baccalaureate degree in psychology from Biola University in La Mirada, California.<sup>1</sup> However, on May 26, 2004, the date of filing, the beneficiary was unable to provide a copy of her diploma, as she had not yet completed payment of her tuition fees. Instead, the petitioner submitted a January 5, 2004 letter from the Biola University registrar indicating both that the beneficiary had received a bachelor of arts degree in psychology, with a concentration in the family and child, on December 20, 2002 and that her diploma was on "accounting hold."

On appeal, counsel submits a copy of the beneficiary's Biola University diploma indicating that the beneficiary was awarded a baccalaureate degree in psychology in 2002, as well as copies of the transcripts of her coursework.

The non-existence or unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a diploma, does not exist or cannot be obtained, the petitioner must demonstrate this and submit secondary evidence pertinent to the facts at issue. Such secondary evidence must overcome the unavailability of primary evidence. 8 C.F.R. § 103.2(b)(2)(i).

The AAO finds the record to establish that, at the time of filing, the beneficiary held a U.S. baccalaureate degree in psychology, one of the degrees the *Handbook* indicates are required for entry-level employment as a social worker. While the copy of the beneficiary's diploma offers primary evidence of her degree, the AAO also finds the secondary evidence provided by the petitioner – the January 5, 2004 letter from the Biola University registrar submitted at the time of filing – to prove the existence of that degree. Further, the registrar's letter documents the unavailability of the beneficiary's diploma at the time of filing, as required at 8 C.F.R. § 103.2(b)(2)(i). Accordingly, the petitioner has satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C) – the beneficiary holds a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

For reasons related in the preceding discussion, the petitioner has established the beneficiary as qualified to perform the duties of a specialty occupation.

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 met that burden.

**ORDER:** The appeal is sustained. The petition is approved.

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<sup>1</sup> Biola University's website ([www.biola.edu/](http://www.biola.edu/)) states that it is accredited by the Accrediting Commission of the Senior Colleges and Universities of the Western Association of Schools and Colleges.