

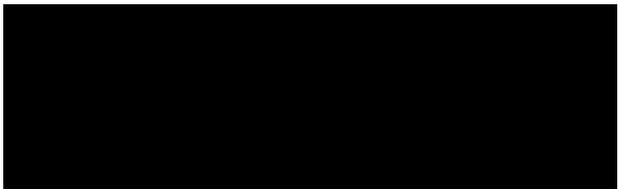
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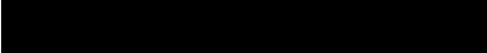
U.S. Citizenship
and Immigration
Services

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FILE:  Office: CALIFORNIA SERVICE CENTER Date: MAY 5, 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 engaged in the business of chiropractic therapy that seeks to employ the beneficiary as a chiropractor intern. 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 hold an unrestricted state license, registration or certificate, which authorizes him to fully practice the specialty occupation. The director cited language from California state regulations governing the practice of chiropractic: “. . . unlicensed individuals are not permitted to diagnose, analyze, or perform a chiropractic adjustment.” The director found that the petitioner did not submit sufficient evidence that clearly established that a licensed doctor of chiropractic is on the premises at all times as required by the regulations. Additionally, the director noted that the petitioner employed one other “Doctor of Chiropractic” and the director concluded that that individual appeared to be unlicensed.

The director did not dispute the fact that the beneficiary holds a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university; however, the evidence of record was insufficient to establish that the described duties of the proffered position are within the boundaries of the State of California regulations governing the practice of Chiropractic.

On appeal, counsel states that the petitioner’s letter originally filed in support of the instant petition stated that the beneficiary will be participating in an authorized preceptorship program working under the direct supervision of a licensed chiropractor. Counsel contends that California state regulations governing the practice of chiropractic states that an exemption is created for student doctors participating in board approved preceptorship programs. Counsel contends that the letter from the petitioner states that the beneficiary will be “working under the direct supervision of a licensed chiropractor.” Additionally counsel refers to the submitted document entitled “Input Worksheet” from the petitioner which represents hourly and salaried wages for two licensed chiropractors. Counsel states that this indicates full-time employment and establishes the requisite physical presence of both licensed chiropractors for supervisory purposes. On appeal, counsel submits the chiropractic license for the second doctor. Counsel submits a brief and additional evidence on appeal.

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.

Additionally, the regulation at 8 C.F.R. § 214.2(h)(v)(C) states:

In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

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 chiropractic intern. 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 doctor of chiropractic degree from Life Chiropractic College West located in Hayward California dated June 14, 2002; the beneficiary's certificate of attainment from the National Board of Chiropractic Examiners dated 2003; information regarding the petitioner; and correspondence from Life Chiropractic College West confirming the approval of a preceptor relationship between the petitioner and the beneficiary valid January 15, 2004 until April 15, 2004.

The director issued a request for additional evidence. The director specifically requested a copy of the beneficiary's California Chiropractic Intern License or evidence that the alien may practice the profession without an intern license. In his response, counsel stated that the beneficiary would be an intern in the preceptorship program working under the direct supervision of a licensed chiropractor. Counsel submitted a copy of section 312 of the State of California regulations governing the practice of chiropractic that discusses the duties that may be performed by unlicensed chiropractors. Additionally, the petitioner submitted the chiropractic license of the person who will be directly supervising the beneficiary.

A review of the state of California's Board of Chiropractic Examiners¹ regulations states:

¹ Accessed at www.chiro.ca.gov.regulations April 19, 2005.

§ 312 Illegal Practice

Unlicensed individuals are not permitted to diagnose, analyze, or perform a chiropractic adjustment. An "unlicensed individual" is defined as any person, including a student or graduate of a chiropractic institution, who does not hold a valid chiropractic license. An exemption is hereby created for student doctors participating in board approved preceptorship programs. . . . Unlicensed individuals who exceed the permitted scope of practice set forth in this regulation shall be in violation of Section 15 of the Chiropractic Act and shall be prohibited from applying for a California chiropractic license for such time as may be determined by the board. Student doctors participating in board approved preceptorship programs are not to be considered "unlicensed individuals" when working in said program.

A review of the record establishes that the petitioner and the beneficiary are participating in an approved preceptorship program.² As the beneficiary will be a student of chiropractic in an approved preceptorship program, he is not considered an "unlicensed individual" under the laws of the state of intended employment. The record also establishes that the beneficiary will be working under the supervision of two licensed chiropractors who both work full-time at the petitioner's clinic. Thus the licensure requirement of 8 C.F.R. § 214.2(h)(v)(c) 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 decision of the director is withdrawn and the appeal is sustained. The petition is approved.

² The Life Chiropractic College West is an approved Chiropractic College by the California Board of Chiropractic Examiners.