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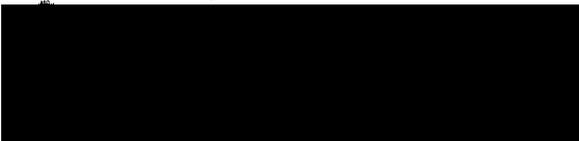


FILE: WAC 04 073 51288 Office: CALIFORNIA SERVICE CENTER Date: OCT 31 2005

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 service center director 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 contracts anesthesiologists to perform anesthetic services at the University Medical Center in Las Vegas, Nevada, and seeks to employ the beneficiary as an anesthesiologist. 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 denied the petition, finding that the beneficiary is not qualified to perform the proffered position because he does not possess proper licensure. On appeal, the petitioner asserts that the beneficiary qualifies for the proffered position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

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

As previously noted, the director denied the petition because the beneficiary does not presently possess a license to practice medicine in the State of Nevada. The record also establishes, however, that beneficiary has met all requirements necessary to obtain such a license. The record contains a letter from the Nevada State Board of Medical Examiners indicating that the beneficiary has submitted an application for an unrestricted license to practice medicine in the State of Nevada, and that the beneficiary is eligible to obtain such license

upon receipt of documentation and verification from the United States Department of Justice, Immigration and Naturalization Service (now Citizenship and Immigration Services – CIS) that the beneficiary is lawfully entitled to enter and work in the United States. Once receipt and verification of such documentation is received the beneficiary's medical license will issue.

Upon review of the record, the petitioner has established that the beneficiary qualifies to perform the proposed position under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

A November 20, 2001 memorandum from [REDACTED] discussing social security cards and the adjudication of H-1B petitions for public high school teachers is relevant to this proceeding. It states that:

An H-1B petition filed on behalf of an alien beneficiary who does not have a valid state license shall 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 SSA. 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 official statement from the Nevada State Board of Medical Examiners indicates that the beneficiary is eligible for an unrestricted license to practice medicine, and that licensure can be obtained immediately upon receipt and certification of documentation from CIS indicating that the beneficiary is lawfully entitled to enter and work in the United States. The approval of the H-1B petition will provide the beneficiary with a nonimmigrant classification that will permit him to enter and work in the United States upon receipt of his medical license. In light of this, CIS will approve the instant petition for one year as the beneficiary is otherwise qualified but for lack of having received his medical license since the State of Nevada will not issue such a license without first having documentation from CIS permitting him to enter and work in the United States.

As related in the discussion above, the petitioner has established that the beneficiary is qualified to perform the duties of the proffered 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.

ORDER: The appeal is sustained. The petition is approved for one year.