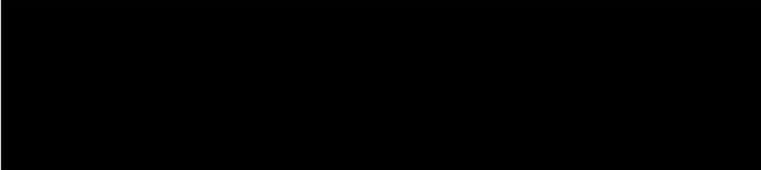




U.S. Citizenship
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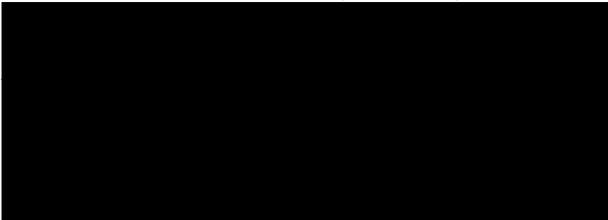
FILE: LIN 05 156 51629 Office: NEBRASKA SERVICE CENTER Date:

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.

Robert P. Wiemann, Chief
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 dismissed. The petition will be denied.

The petitioner is a contract therapy company that provides services to nursing homes. It seeks to employ the beneficiary as a physical therapist. 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).

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the basis that the beneficiary lacks licensure to provide services as a physical therapist. Counsel submitted a timely appeal.

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), provides in part for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) states that to qualify to perform services in a specialty occupation, an alien must 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.

The director's denial letter states that the petitioner requests H-1B status for one year so as to have the beneficiary enter the United States for the physical therapist licensing examination. The director stated that the record included the beneficiary's baccalaureate degree in physical therapy from a university in the Philippines; and a certificate (dated February 16, 2005) from the International Commission on Healthcare Professions, which is a division of the Commission on Graduates of Foreign Nursing Schools (CGFNS), which states that the beneficiary met the requirements of section 212(a)(5)(C) of the Act, 8 U.S.C. § 212.15(f), for the profession of physical therapist. The director noted there was no evidence from the Michigan Board of Physical Therapy indicating that the beneficiary is eligible to take the National Physical Therapy Examination (NPTE) or that passing the NPTE is his only obstacle to state licensure. Citizenship and Immigration Services (CIS) regulations, the director stated, require that a beneficiary be eligible to immediately begin work upon entry into the United States. The director found that the petitioner failed to furnish a letter from the State of Michigan indicating that a physical therapist license will only be

issued to a foreign candidate who is physically present in the United States; or provide a letter explaining when the beneficiary would satisfy the outstanding licensure requirements and describing what he would do in the United States while unlicensed. The director found the submitted memorandum (dated November 20, 2001) from [REDACTED] Acting Assistant Commissioner, Office of Adjudications, which discusses social security cards and the adjudication of H-1B petitions for public high school teachers, not applicable to the petition. The director concluded that the record failed to establish that the beneficiary possesses an unrestricted state license, registration, or certificate authorizing him to fully practice as a physical therapist and be immediately engaged in that occupation in the State of Michigan; and also did not establish that the beneficiary would perform duties in a specialty occupation until he satisfies the licensing requirements.

On appeal, the petitioner states that the submitted letter from the State of Michigan indicates the beneficiary's eligibility to take the NPTE and that the beneficiary will receive a physical therapist license after he passes the NPTE. The petitioner submits a printout from the State of Michigan's website; it states that passage of the NPTE is the only remaining component that the beneficiary must complete for licensure. The petitioner states that the NPTE is only available in the United States and that it requests H-1B status for one year so that the beneficiary can enter the United States and take the licensing examination.

Upon review of the record, the petitioner has not established that the beneficiary is qualified to perform the duties of the proposed position: a physical therapist in the State of Michigan.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) states that to qualify to perform services in a specialty occupation, an alien must 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.

The AAO finds that the memorandum from [REDACTED] does not support the petitioner's assertion that the instant petition be approved for one year so as to allow the beneficiary to enter the United States and take the NPTE. The memorandum indicates that an H-1B petition shall be approved for a period of 1-year if the only obstacle to obtaining state licensure is that the alien cannot obtain a social security card from the Social Security Administration. The memorandum also states: "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 letter from the State of Michigan Department of Community Health (dated November 15, 2005) indicates that the beneficiary is eligible to take the NPTE and the State of Michigan printout reflects that the item requiring completion by the beneficiary is passage of the NPTE. This evidence indicates that the beneficiary has not passed the NPTE. It does not convey that the only obstacle to obtaining state licensure is that the beneficiary cannot obtain a social security card from the SSA. Thus, the Cook memorandum, which deals specifically with social security cards, does not apply here.

It is noted that the regulation at 8 C.F.R. 214.2(h)(4)(v) indicates that if a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine

the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted. The AAO finds that the record contains no evidence from the State of Michigan indicating that it offers a temporary license to practice physical therapist duties. Thus, the regulation at 8 C.F.R. 214.2(h)(4)(v) is not applicable here.

The petitioner asserts that it seeks H-1B status for the beneficiary so as to have him to take the NPTE, as the examination is only offered in the United States. The petitioner's assertion is unpersuasive as section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. 1101(a)(15)(H)(i)(b), provides that the H-1B classification applies to nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation. H-1B classification is therefore not intended as an avenue for aliens seeking to enter the United States for the purpose of taking a state licensing examination. Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). The plain meaning of the statutory language should control except in rare cases in which a literal application of the statute will produce a result demonstrably at odds with the intent of its drafters, in which case it is the intention of the legislators, rather than the strict language, that controls. *Samuels, Kramer & Co. v. CIR*, 930 F.2d 975 (2d Cir.), *cert. denied*, 112 S. Ct. 416 (1991).

As related in the discussion above, the petitioner has failed to establish 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 not sustained that burden.

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