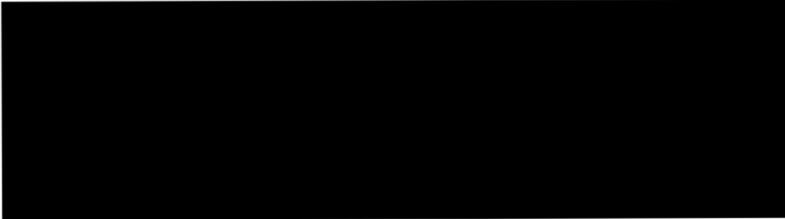




U.S. Citizenship  
and Immigration  
Services

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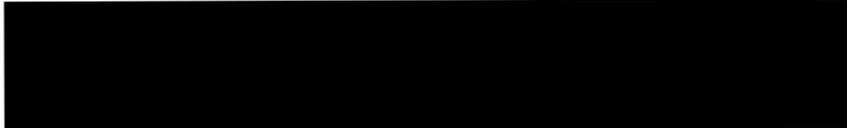
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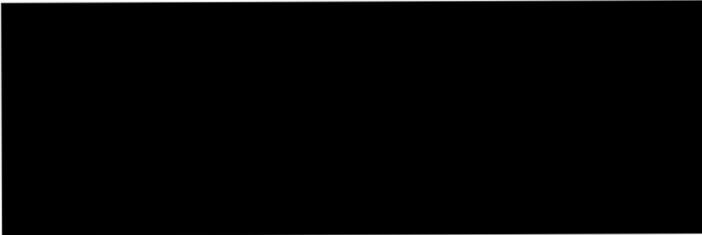
FILE: WAC 04 254 52721 Office: CALIFORNIA SERVICE CENTER Date: **DEC 19 2006**

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 California Service Center denied the nonimmigrant visa petition and the matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a clinical research facility. It seeks to employ the beneficiary as a clinical research associate. It 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: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B; and (6) the appeal brief and supporting evidence. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition, finding that the beneficiary was not qualified to perform the services of the specialty occupation, and that the beneficiary was inadmissible as an uncertified foreign health-care worker.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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.

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.

In denying the proposed position, the director stated that the submitted 2004-2005 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that the proposed duties are those of a physician assistant (PA), which requires a baccalaureate or higher degree in a specific academic discipline and state certification. The director also stated that CIS regulations state that a physician assistant, which is a health care occupation, requires certification and that evidence of certification must be provided from a credentialing organization listed in the regulations. The director found that the record lacks evidence of the beneficiary's federal and state certification to practice as a PA.

On appeal, counsel maintains that the proposed position is not the same as a PA. She agrees that the proposed duties of taking patient histories; performing physical examinations and blood processing; ordering and interpreting laboratory tests; performing minor surgical procedures (phlebotomy, electrocardiogram, exercise stress test, tympanometry, and reflectometry); collecting and evaluating data from patient charts, medical records, interviews, questionnaires, and diagnostic tests; and having responsibility for data encoding and data management of information are similar to those of a PA. Counsel contends that the majority of the beneficiary's duties entail assisting the principal investigator in conducting clinical research trials such as reviewing, evaluating, and analyzing data and determining protocol feasibility and financial/budgetary issues, and preparing regulatory documents. According to counsel, the submitted job postings establish the proposed position as requiring a bachelor's degree. She states that for clinical research associate staff the petitioner normally requires a bachelor's degree in the health or life sciences field. Counsel asserts that researchers or persons engaged in medical research are exempt from the foreign healthcare worker certificate requirement set forth under section 212(a)(5)(C) of the Act, 8 U.S.C. § 1182 (a)(5)(C).

The petitioner is seeking the beneficiary's services as a clinical research associate. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail the following:

- In partnership with the principal research investigator, a licensed medical doctor, participate in meetings and conferences held by pharmaceutical and research companies prior to the start of any research project to develop and finalize procedures and protocol; propose amendments/revisions to protocols during the meetings as well as during the course of the study. (5 percent of the beneficiary's time)

- Evaluate and track eligibility of patients for inclusion into studies; explain to participants the purpose of the study; obtain participant's informed consent; explain diagnostic procedures to patients. (25 percent of the beneficiary's time)
- Under the supervision of the licensed medical practitioner provide history taking, physical examinations, blood processing, and order and interpret laboratory tests; perform minor surgical procedures such as phlebotomy, electrocardiogram, exercise stress test, tympanometry, and reflectometry. (12.5 percent of the beneficiary's time)
- Collect and evaluate data from patient charts, medical records, interviews, questionnaires, and diagnostic tests; responsible for data encoding and data management of gathered information using the computer and/or internet. (50 percent of the beneficiary's time)
- Review the proposed budget of the sponsor with the protocol's required procedures; prepare the proposed and comparison budget and submit it to the principal investigator; submit and negotiate the final budget with the sponsor; negotiate professional fees and fees for associated services such as laboratory and radiology. (2.5 percent of the beneficiary's time)
- Prepare and submit to local, national, or institutional review boards regulatory documents for the sponsor, as required by law. (5 percent of the beneficiary's time)

For the proposed position the petitioner requires a baccalaureate degree in the life or health sciences field; it prefers a degree in medicine.

The AAO agrees with the director's conclusion that the proposed position requires state and federal certification and that the beneficiary does not possess such licensure.

Counsel on appeal indicates that about 60 percent of the proposed duties are those of a PA. It is noted that because the beneficiary will perform PA duties, the proposed position requires state certification, completion of "an accredited, formal education program," and passage of a national exam to obtain a license, as indicated in the 2006-2007 edition of the *Handbook*.

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 record reflects that the beneficiary was granted a bachelor of science in biology from the University of Santo Tomas in the Philippines. According to the Academic Credentials Evaluation Institute, Inc. (ACEI), her degree is the educational equivalent of a bachelor's degree in biology as awarded by regionally accredited institutions of higher education in the United States. Although the beneficiary holds a degree considered the equivalent of a U.S. bachelor's degree in biology, there is no evidence in the record that the beneficiary completed an "accredited, formal education program," for a PA according to the laws of California. The record does not reflect that the beneficiary holds state certification to practice as a PA and passed a national exam to obtain a license. As such, the petitioner has failed to establish the beneficiary's qualifications to perform the duties of the proffered position. For this reason the petition will be denied.

Section 212(a)(5)(C) of the Act, 8 U.S.C. § 1182(a)(5)(C) pertains to uncertified foreign health-care workers and is relevant here. It states the following:

Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that--

- (i) the alien's education, training, license, and experience--
  - (I) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;
  - (II) are comparable with that required for an American health-care worker of the same type; and
  - (III) are authentic and, in the case of a license, unencumbered;
- (ii) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and
- (iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such a test or has passed such an examination.

The regulation at 8 C.F.R. § 212.15 covers certificates for foreign health care workers; it states:

(a) General certification requirements.

[A]ny alien who seeks admission to the United States as an immigrant or as a nonimmigrant for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible unless the alien presents a certificate from a credentialing organization, listed in paragraph (e) of this section.

(c) Covered health care occupations. . . . [T]his paragraph (c) applies to any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training:

- (1) Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.
- (2) Occupational Therapists.

- (3) Physical Therapists.
- (4) Speech Language Pathologists and Audiologists.
- (5) Medical Technologists (Clinical Laboratory Scientists).
- (6) Physician Assistants.
- (7) Medical Technicians (Clinical Laboratory Technicians)

(e) Approved credentialing organizations for health care workers. An alien may present a certificate from any credentialing organization listed in this paragraph (e) with respect to a particular health care field. . . .

(1) The Commission on Graduates of Foreign Nursing Schools (CGFNS) is authorized to issue certificates under section 212(a)(5)(C) of the Act for nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants.

(2) The National Board for Certification in Occupational Therapy (NBCOT) is authorized to issue certificates in the field of occupational therapy pending final adjudication of its credentialing status under this part.

(3) The Foreign Credentialing Commission on Physical Therapy (FCCPT) is authorized to issue certificates in the field of physical therapy pending final adjudication of its credentialing status under this part.

(f) Requirements for issuance of health care certification. (1) Prior to issuing a certification to an alien, the organization must verify the following:

(i) That the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type;

(ii) That the alien's education, training, license, and experience are authentic and, in the case of a license, unencumbered;

(iii) That the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States. This verification is not binding on the DHS; and

(iv) Either that the alien has passed a test predicting success on the occupation's licensing or certification examination, provided such a test is recognized by a majority of states

licensing the occupation for which the certification is issued, or that the alien has passed the occupation's licensing or certification examination.

(2) A certificate issued under section 212(a)(5)(C) of the Act must contain the following:

(i) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certificate;

(ii) The date the certificate was issued;

(iii) The health care occupation for which the certificate was issued; and

(iv) The alien's name, and date and place of birth.

(g) English language requirements. (1) With the exception of those aliens described in paragraph (g)(2) of this section, every alien must meet certain English language requirements in order to obtain a certificate. . . .

Upon review of the record, the petitioner failed to establish that the beneficiary satisfied the applicable statutory and regulatory requirements, as set forth above.

As provided at 8 C.F.R. § 212.15, a person who seeks to perform services in the health care occupation of PA is required to provide a certificate from an approved credentialing organization. The CGFNS is authorized to issue certificates for PA, pursuant to 8 C.F.R. § 212.15(e)(1). It is noted that no evidence in the record reflects that CGFNS issued a certification for the beneficiary to enter as a PA. Based on the evidence of record, the petitioner failed to submit a certificate from the CGFNS or any other approved credentialing organization, as required by the regulations at 8 C.F.R. § 212.15. The regulation at 8 C.F.R. § 212.15(d) requires that an alien seeking to work in a covered health care occupation must obtain a certificate prior to admission. As the petitioner did not meet these eligibility requirements, the petition must be denied.

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, or that the petitioner met the threshold eligibility requirements to obtain classification for the beneficiary as a foreign health care worker. Accordingly, the AAO shall not disturb the director's denial of the petition.

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