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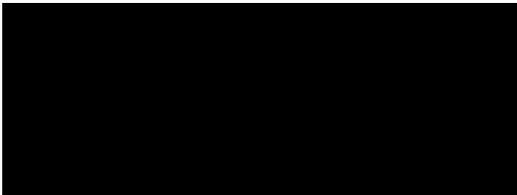
FILE: EAC 04 072 50844 Office: VERMONT SERVICE CENTER Date: JAN 27 2006

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, 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 dismissed. The petition will be denied.

The petitioner provides health care services and personnel. It seeks to employ the beneficiary as a physical therapist. 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 petitioner failed to submit the beneficiary's license or other evidence showing that the beneficiary is immediately eligible to engage in the proposed position, that of a physical therapist. The director found the submitted application for a limited permit insufficient to establish that the beneficiary is qualified for the proposed 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(v)(A), which relates to licensure for the H classification, states that if an occupation requires a licensure for an individual to fully perform the duties of the occupation, an alien seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

On appeal, counsel states that the beneficiary's education has been approved by the New York State Education Department (NYSED) for the purpose of taking the National Physical Therapy Examinations. Counsel asserts that the NYSED did not issue a limited permit to the beneficiary because CIS denied the beneficiary's H-1B petition. Counsel cites to section 6735, Article 136 of the New York Consolidated Laws, which relates to limited permits for physical therapists. Counsel submits into the record a document entitled "Authorization to Test."

Upon review of the record, the petitioner has not established that the beneficiary is qualified to provide services as a physical therapist in the state of New York.

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, an appeal brief, and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

Counsel correctly stated that section 6735, Article 136 of the New York Consolidated Laws, which relates to limited permits for physical therapists, reads as follows:

Limited permits.

- a. The department of education shall issue a limited permit to an applicant who meets all requirements for admission to the licensing examination.
- b. All practice under a limited permit shall be under the supervision of a licensed physical therapist in a public hospital, an incorporated hospital or clinic, a licensed proprietary hospital, a licensed nursing home, a public health agency, a recognized public or non-public school setting, the office of a licensed physical therapist, or in the civil service of the state or political subdivision thereof.
- c. Limited permits shall be for six months and the department may for justifiable cause renew a limited permit provided that no applicant shall practice under any limited permit for more than a total of one year.
- d. Supervision of a permittee by a licensed physical therapist shall be on-site supervision and not necessarily direct personal supervision except that such supervision need not be on-site when the supervising physical therapist has determined, through evaluation, the setting of goals and the establishment of a treatment plan, that the program is one of maintenance as defined pursuant to title XVIII of the federal social security act.
- e. The fee for each limited permit and for each renewal shall be seventy dollars.

On appeal, counsel asserts that although the beneficiary is eligible for a limited permit, the NYSED did not issue a limited permit to the beneficiary because CIS denied the beneficiary's H-1B petition. Counsel's assertion is not persuasive as the AAO finds that the petitioner submitted no supporting evidence in the record reflecting that NYSED did not issue a limited permit to the beneficiary on the ground that CIS denied the beneficiary's H-1B permit.<sup>1</sup> The documents in the record, "An Application for Limited Permit" (an application for a limited permit application), and "Authorization to Test" (authorizes the beneficiary to take a physical therapy examination from July 11, 2004 to September 9, 2004) do not report on NYSED's decision relating to issuing a limited permit to the beneficiary. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS vs. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

As related in the discussion above, the petitioner has not established that the beneficiary is qualified to perform the duties of the proposed position. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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<sup>1</sup> According to section 6735, Article 136 of the New York Consolidated Laws, limited permits are issued for six months and a limited permit may be renewed for justifiable cause provided that no applicant shall practice under any limited permit for more than a total of one year.

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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.