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20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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FILE: WAC 04 167 50663 Office: CALIFORNIA SERVICE CENTER Date: **JUN 26 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 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 dismissed. The petition will be denied.

The petitioner is a rehabilitation center that 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 § 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 because the beneficiary is not qualified to perform the duties of a specialty occupation; specifically, he does not hold the required California license to practice physical therapy. On appeal, counsel submits a brief.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(v):

If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1A nurse) 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.

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 petitioner is seeking the beneficiary's services as a physical therapist. The petitioner indicated that the beneficiary is a qualified candidate for the job because he possesses a foreign bachelor's degree in physical therapy, has completed additional studies related to physical therapy, and has related employment experience.

The director found that the beneficiary was not qualified for the proffered position because he does not hold the required state license from California. On appeal, counsel states, in part, that CIS regulations require that the beneficiary meet only one criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C). He states further that the beneficiary is qualified for the position because he holds the equivalent of a U.S. bachelor's degree in physical therapy.

Pursuant to the California Business & Professions Code § 2630:

It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked license under this chapter. . . .

The proffered position is that of a physical therapist. In its *Occupational Outlook Handbook (Handbook)*, 2006-2007 edition, the Department of Labor finds that all states require physical therapists to pass a licensure exam before they can practice, after graduating from an accredited physical therapist educational program. In this case, the beneficiary holds a bachelor's degree in physical therapy conferred by a Filipino institution, and has completed additional studies related to physical therapy. The record, however, does not contain an evaluation of the beneficiary's credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). It is noted that the evaluator from the International Education Research Foundation, Inc. stipulates that his evaluation of the beneficiary's credentials is for the purpose of physical therapy licensure only. Further, the evaluator does not specify that the beneficiary holds the equivalent of a bachelor's degree in physical therapy from a regionally accredited college or university in the United States, as asserted by counsel on appeal. The record also contains no evidence that the beneficiary holds the required license from the State of California. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation within the meaning of the regulations.

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.