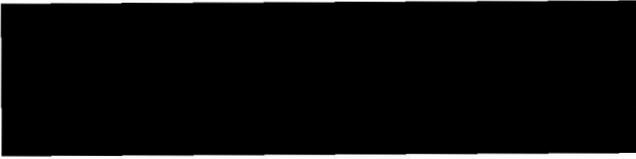


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U.S. Citizenship  
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*Dr*

FILE: WAC 04 150 51052 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 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 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 an intermediate facility for the developmentally disabled that seeks to employ the beneficiary as a health services coordinator. 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 on the basis of the petitioner's failure to submit requested evidence.

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

The petitioner's March 3, 2004 letter of support stated that the beneficiary would "deal with" the interpretation, analysis, and implementation of quality control standards in the health services provided by the petitioner's health staff and personnel, which would involve extensive analysis of health services agreements, contracts, and the comprehensive implementation of the petitioner's goal in the operation of the petitioner's facility. The beneficiary would also develop a standard policy to be followed by the facility's health care staff; schedule or monitor that each member of the health care staff has the requisite training, instruction, or continuing education to fully comply with the quality standards imposed by state and local regulations and the proper standard of care as expected by each patient in the facility; develop an effective communication/information system between the client, care staff, and personnel in order to monitor, avoid, and eventually eliminate tardiness, absenteeism, and truancy among the healthcare staff, and ensure that the system is implemented and followed; analyze the facility's requirements in determining the training and instruction appropriate and needed by the health care staff so as to update them with the latest medical breakthroughs, equipment, and procedures; improve on existing policies in handling complaints and suggestions by clients and patients; and review health care staff performance. The petitioner stated that a qualified candidate for the proposed position would possess a bachelor's degree in nursing or any health care-related field, the sciences, or business administration with a medical background.

In his July 21, 2004 request for evidence, the director requested several items regarding the proposed position, as well as several items from the petitioner that would "clearly substantiate the information provided on the Form I-129." Specifically, the director requested copies of the petitioner's California Employment Development Department Forms DE-6, Quarterly Wage Reports, for the previous four quarters; a line and block organizational chart showing the petitioner's hierarchy and staffing levels (names of employees, job titles, and brief job descriptions were to be provided); a copy of the petitioner's facility license; certified copies of the petitioner's 2002 and 2003 federal income tax returns; and a company profile. The company profile was to include more information regarding the petitioner's business organization, and was to include evidence such as copies of company brochures, pamphlets, website, or any other printed work published by the petitioner which outlined, in detail, the products or services provided by the petitioner.

Counsel's October 5, 2004 response to the director's request for evidence did not include any of the evidence that the director had requested regarding the petitioner, nor did he provide a reason for his

failure to submit any of these items. The only evidence counsel submitted in this regard was a copy of a business card.

The director's November 18, 2004 denial noted this failure to submit the requested evidence. According to the director, "the nature of the petitioner's business operation is not entirely clear." The director denied the petition, pursuant to 8 C.F.R. § 103.2(b)(14), which states that the failure to submit requested evidence that precludes a material line of inquiry is grounds for denying a petition.

Counsel's December 13, 2004 appellate brief does not address the basis of the petition's denial. Rather, counsel argues that the proposed position qualifies for classification as a specialty occupation, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>1</sup>

However, this was not the basis of the director's decision; the denial was not based on his determination that the proposed position does not qualify for classification as a specialty occupation. The basis of the denial was the petitioner's failure to submit the items that the director had requested. Because the petitioner did not submit these items, or offer any explanation of its failure to do so, the director was unable to undertake any analysis as to whether the proposed position qualifies as a specialty occupation.

On appeal, counsel states the following:

It seems that the immigration examiner, paralegal[,] or assessment officer assigned to this file is not just only assuming but is also trying to twist the facts and truths [sic]. He/She is already determined to deny the case since day one and just simply resort [sic] to delaying tactics by requiring voluminous confidential information from the employer. This is another case of a pre-stamped denial. . . .

However, the AAO finds no evidence in the record to support the assertion that the director was predisposed toward denying this case. The petitioner was put on notice that additional evidence was required to verify the information reported on the Form I-129, and was provided twelve weeks to submit that evidence. The petitioner did not submit the requested evidence and offered no explanation of its failure to provide it.

The AAO notes that counsel and the petitioner have again failed to provide this evidence on appeal, and have again provided no explanation for the failure to do so. Counsel and the petitioner have now been afforded two opportunities to provide the requested information. However, the record still lacks any evidence to verify the information reported on the Form I-129. CIS considers the job duties in relation to the petitioner's business operations. The evidence of record does not establish that the petitioner employs 19 persons or that it has gross annual income of \$980,000. Thus, the AAO is unable to analyze whether the proposed position is a specialty occupation.

Although specifically and clearly requested by the director, the petitioner declined to provide copies of its quarterly wage reports, a copy of an organizational chart, a copy of its facility license, copies of its income tax returns, and printed work regarding the petitioner's services, such as a brochure, pamphlet, or website. This information was requested in order to verify the information reported on the Form I-129. The petitioner's failure to submit these documents, or offer any explanation as to why it is unable to submit

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<sup>1</sup> Counsel also resubmits copies of job postings that he submitted in response to the director's request for evidence. However, these job postings do not address the issue at hand, and the AAO will not address them here.

these documents cannot, and will not, be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

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.