

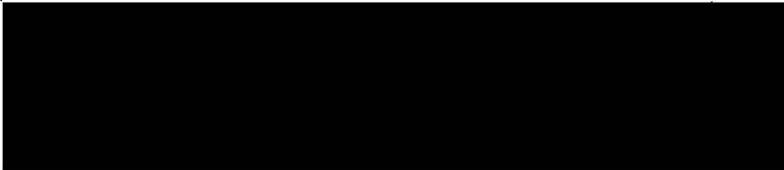
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U.S. Citizenship
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Services

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FILE: EAC 04 206 51774 Office: VERMONT SERVICE CENTER Date: OCT 05 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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The appeal will be summarily dismissed.

The petitioner recruits and places individuals in the health industry. It seeks to place the beneficiary in a position as an occupational therapist. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On May 5, 2005, the director denied the petition determining that the record did not contain evidence that the beneficiary is a licensed occupational therapist in New York, or other evidence that she is immediately eligible to practice her profession in New York. The director also noted that the petitioner had not demonstrated an immediate need for the beneficiary's services in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act.

On June 3, 2005, the Vermont Service Center received a Form I-290B, Notice of Appeal, indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days. A review of the record reveals counsel's submission of supporting documentation including the beneficiary's certification as an occupational therapist dated June 8, 2005; a certification from the International Commission on Healthcare Professions, a division of CGFNS, certifying that the beneficiary has met the requirements for the profession of occupational therapist issued February 1, 2005; a February 17, 2005 letter from the New York State Office of the Professions indicating that it had received the first part of the beneficiary's application for a professional license; and a certificate from the University of the State of New York Education Department indicating that the beneficiary is qualified to practice as an occupational therapist in New York as of March 1, 2006.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

Counsel's submission of documentation on appeal is insufficient as a basis for the appeal. The record shows that the beneficiary did not have a license to perform occupational therapy in New York when the petition was filed on July 6, 2004. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. Citizenship and Immigration Services affirmatively require a petition to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

As neither the petitioner nor counsel presents additional evidence or argument on appeal sufficient to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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