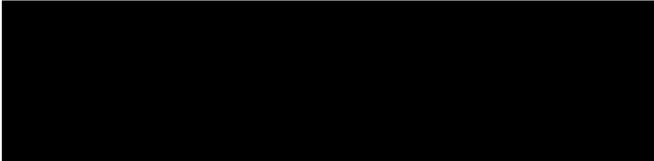




U.S. Citizenship  
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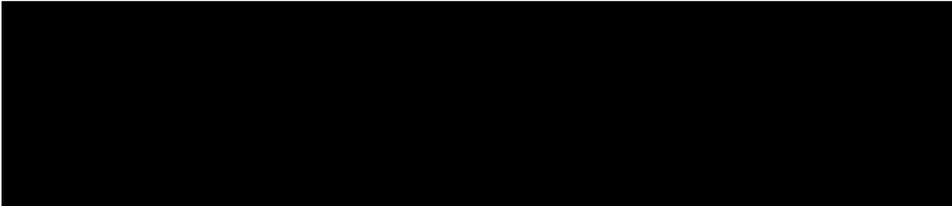
FILE: SRC 05 203 50088 Office: TEXAS SERVICE CENTER Date: JUN 26 2007

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.

for *Michael T. Kelly*  
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 The decision of the director will be withdrawn and the matter will be remanded for further consideration.

The petitioner provides rehabilitation services in the State of Michigan. It seeks to employ the beneficiary as a "rehab coordinator" in the State of Georgia. 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, determining that the record failed to establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's requests for evidence, dated July 20, 2005 and October 25, 2005, respectively; (3) the petitioner's responses to the director's requests; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) consistently interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary’s services as a rehab coordinator. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s July 13, 2005 letter in support of the petition; and the petitioner’s September 15, 2005 and October 11, 2005 responses to the director’s requests for evidence. As stated by the petitioner, the proposed duties are as follows:

- Plan, administer, and direct operation of health rehabilitation programs, such as physical, occupational, recreational, and speech therapies;
- [C]onsult with medical and professional staff and professional[s] from associated health care fields to plan and coordinate joint patient management objectives;
- Conduct staff conferences and plans [sic] training programs to maintain proficient staff in therapy techniques and use of new methods and equipment to meet patient’s needs;
- Represent, advocate and promote the discipline throughout the Health Center and encourage broad staff participation;

- Participate in recruitment, orientation and performance management of staff in collaboration with Patient Care providers;
- Ensure that all therapy services are provided in accordance [with] policies and procedures in compliance with State and federal regulations;
- Maintain confidential and secure records of rehabilitation cases in accordance with the Standard for rehabilitation' [sic];
- Allocate personnel on basis of work load, space, and equipment available; [and]
- Analyze operating co[s]ts and prep department budget. Recommend patient fees for therapy based on use [of] equipment and therapy.

In her denial, the director found that the proposed duties do not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the petitioner established all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel cites the *Handbook's* report that an entry-level rehabilitation coordinator position requires a college graduate. Counsel states further that the record contains letters from similar businesses to show that the degree requirement is common to the industry. Counsel also states that the petitioner, in the past, has hired a person with a bachelor's degree to perform similar duties, and that the proposed duties are so complex as to require a bachelor's degree.

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this matter, the petitioner is seeking the beneficiary's services as a rehab coordinator.

Chapter 33 of Title 43 of the Official Code of Georgia, known as the "Georgia Physical Therapy Act," defines "physical therapy" and "physical therapist," respectively, as:

[E]xamination, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain from injury, disease, and any other bodily and mental conditions and includes the administration, interpretation, documentation, and evaluation of tests and measurements of bodily functions and structures; *the planning, administration, evaluation, and modification of treatment and instruction*, including the use of physical measures, activities, and devices, for preventive and therapeutic purposes; and *the provision of consultative, educational, and other advisory services* for the purpose of preventing or reducing the incidence and severity of physical disability, bodily malfunction, and pain. (Emphasis added.)

[A] person licensed to practice physical therapy as defined in this chapter and whose license is in good standing. A physical therapist shall be designated by the initials "P.T."

In view of the foregoing, the proffered position entails the practice of physical therapy and is thus similar to that of a physical therapist. In its *Handbook*, 2006-07 edition, the DOL 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. Accordingly, the petitioner has overcome the grounds upon which the director denied the petition. The proffered position is a specialty occupation.

The petition may not be approved, however, because the director has not determined whether the beneficiary is qualified to perform the services of a specialty occupation. In this matter, the beneficiary holds a bachelor's degree in physiotherapy conferred by an Indian institution. An evaluator from a company that specializes in evaluating academic credentials concluded that the beneficiary possesses the equivalent of a bachelor's degree in physiotherapy awarded by an accredited U.S. college or university. The record, however, does not contain evidence that the beneficiary holds the required license from the State of Georgia. Further, the director has not determined whether a specialty occupation is available for the beneficiary, as the petitioner has not submitted a contract with a business in Georgia or a description of employment from the beneficiary's ultimate work location in Georgia. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the proffered position, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's January 26, 2006 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.