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FILE: SRC 05 193-51477 Office: TEXAS SERVICE CENTER Date: **MAR 07 2007**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:  
[Redacted]

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 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 provides recruitment, orientation, and placement services for school districts seeking teachers and seeks to employ the beneficiary as a teacher. 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 his determination that the petitioner had failed to demonstrate that the beneficiary qualifies to perform the duties of a specialty occupation. Specifically, the director found that the beneficiary lacked the licensure required by the State of Georgia for this position. On appeal, counsel contends that the director erred in denying the petition.

The record of proceeding before the AAO contains: (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

According to the petitioner's May 23, 2005 letter of support, the duties of the proposed position would include educating students by using educational tools, including films, computer resources, slides, overhead projectors, and the latest technology in teaching; developing and maintaining long-range and daily instructional plans for students; using a variety of teaching methods and strategies such as group work, lectures, mini-lessons, exploration, questioning, discussion, and other cooperative teaching techniques; using appropriate techniques to encourage active participation in decision-making regarding such things as classroom rules, organization and topics of study, which communicate a caring attitude and trust of students and foster healthy self-esteem in students; developing healthy self-esteem in students; promoting interactive learning habits among students; designing classroom presentations to meet student needs and abilities; working with students individually, if necessary; evaluating students' performance and potential, and using a variety of assessment strategies to prepare, administer, and grade tests; preparing report cards and meeting with parents and school staff to discuss students' academic progress or problems when necessary. The supporting materials indicate that the petitioner would like to employ the beneficiary in the public school system in Clayton County, Georgia. This is a position requiring state credentials.

The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource the AAO routinely consults for its information about the duties and educational requirements of particular occupations, confirms that licensure is required for special education teachers in every State. Pursuant to 8 C.F.R. § 214.2(h)(4)(v), if the State requires licensure in order to work in the specialty occupation, the beneficiary must possess the license prior to approval of the H-1B petition:

- (A) General. 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-1C 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.

- (B) Temporary licensure. If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.
- (C) Duties without licensure. In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.
- (D) H-1C nurses. For purposes of licensure, H-1C nurses must provide the evidence required in paragraph (h)(3)(iii) of this section.
- (E) Limitation on approval of petition. Where licensure is required in any occupation, including registered nursing, the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. An alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year unless he or she has obtained a permanent license in the state of intended employment or continues to hold a temporary license valid in the same state for the period of the requested extension.

In her July 21, 2005 request for additional evidence, the director requested a copy of the beneficiary's Georgia teaching licensure. However, the petitioner did not address the issue of licensure in its October 17, 2005 response to the director's request. In her November 22, 2005 denial, the director noted that the petitioner had not submitted the license, as requested, and denied the petition.

On appeal, counsel states, incorrectly, that the director denied the petition on the basis of her determination that "the employer is not considered an employer." However, the director did not address this issue in her denial; the sole basis for the director's denial was the petitioner's failure to submit the beneficiary's teaching licensure; no other issues were raised.

Counsel addresses the basis of the denial at the end of his appellate brief:

The State of South Carolina does not issue licenses until a candidate obtains a Social Security Number. Please see the enclosed pertinent information from the South Carolina Department of Education which expressly states this requirement.

However, counsel's statement does not overcome the basis of the denial. First, the documentation referenced by counsel is not in the record. Even if it were in the record, however, it would still not overcome the

director's denial, as this petition does not involve a position located in South Carolina. According to the Form I-129, the location of intended employment is North Cutt Elementary School in College Park, Georgia, a Clayton County Public School. Therefore, the requirements that South Carolina has enacted for teacher licensure are irrelevant.

Pursuant to 8 C.F.R. § 214.2(h)(v)(A), 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-1C 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. Licensure would not preclude the granting of a petition if the only bar to licensure is the fact that a beneficiary cannot obtain a social security card because the beneficiary is not yet present in the United States. See Memorandum from Thomas E. Cook, Acting Assistant Commissioner, Office of Adjudications, *Social Security cards and the Adjudication of H-1B Petitions*, HQISD 70/6.2.8-P (November 20, 2001). This memorandum, at page 2 states the following:

An H-1B petition filed on behalf of an alien beneficiary who does not have a valid state license shall be approved for a period 1-year provided that the only obstacle to obtaining state licensure is the fact that the alien cannot obtain a social security card from the SSA [emphasis in original]. Petitions filed for these aliens must contain evidence from the state licensing board clearly stating that the only obstacle to the issuance of state licensure is the lack of a social security card.

However, the petitioner has not established that the only obstacle to the beneficiary obtaining licensure is the fact that he cannot obtain a social security card. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the petitioner has not established that the beneficiary qualifies to work as a public school teacher in Georgia, and the petition was properly denied. The petitioner has not established that the beneficiary meets the licensure requirements as set forth at 8 C.F.R. § 214.2(h)(4)(v), and the AAO will not disturb the director's denial of the petition.

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.