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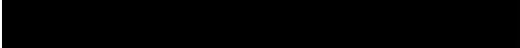
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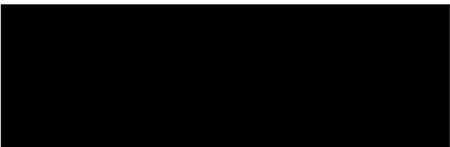
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FILE: EAC 06 178 50639 Office: VERMONT SERVICE CENTER Date: **NOV 28 2007**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. 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 physical and occupational therapy services and operates in several states. It seeks to employ the beneficiary as a physical therapist in Wheaton, Illinois. Accordingly, the petitioner endeavors to classify the beneficiary as a temporary nonimmigrant worker 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 record of proceeding before the AAO contains: (1) the Form I-129 filed May 28, 2006 with supporting documentation; (2) the director's September 6, 2006 request for further evidence (RFE); (3) counsel's October 19, 2006 response to the director's RFE, including a copy of the Foreign Credentialing Commission on Physical Therapy's (FCCPT) December 6, 2002 report prepared for the State of Illinois on behalf of the beneficiary; (4) the director's January 4, 2007 denial decision; and (5) the Form I-290B, counsel's brief, and documentation submitted in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

On January 4, 2007, the director denied the petition, determining that the petitioner had not provided evidence of the beneficiary's license to practice the profession of physical therapy from the state of intended employment, or other evidence, to establish that the beneficiary is immediately eligible to engage in her profession.

On appeal, counsel for the petitioner asserts that he had provided a copy of the beneficiary's physical therapy license in response to the director's RFE. Counsel provides a copy of his letter, dated November 1, 2006 and a copy of the beneficiary's physical therapist license for the State of Maryland. Counsel contends that the copy of the beneficiary's Maryland license support a reversal of the director's decision and approval of the petition.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The Form ETA 9035E, Labor Condition Application (LCA) indicates that the petitioner plans to employ the beneficiary in Wheaton, Illinois. Thus, it is necessary to review the Illinois laws and regulations governing the practice of physical therapy in its State.

The Illinois Physical Therapy Act found at 225 ILCS 90 of the Business and Professions Code, discusses the requirements, including licensing of physical therapists. At 225 ILCS 90/2, the Illinois Act makes clear that "[n]o

person shall after the date of August 31, 1965 begin to practice physical therapy in this State or hold himself out as being able to practice this profession, unless he is licensed as such in accordance with the provisions of this Act." Regarding the practice of physical therapy by an individual licensed in another state, the Illinois Act at 225 ILCS 90/11 states:

Sec. 11. Endorsement. The Department may, in its discretion, license as a physical therapist or physical therapist assistant, without examination, on payment of the required fee, an applicant for a license who is a physical therapist or physical therapist assistant, as the case may be, licensed under the laws of another state if the requirements for a license of physical therapists or physical therapist assistant in the state in which the applicant was licensed were at the date of his or her licensure substantially equal to the requirements in force in this State on that date. The Department may waive the English proficiency examination by rule.

Applicants have 3 years from the date of application to complete the application process. If the process has not been completed in 3 years, the application shall be denied, the fee forfeited and the applicant must reapply and meet the requirements in effect at the time of reapplication.

Title 68 of Illinois Professions and Occupations Code at Chapter VII, Part 1340 states:

Section 1340.50 Endorsement

- a) An applicant who is currently licensed under the laws of another state or territory of the United States and who wishes to be licensed as a physical therapist or physical therapist assistant by endorsement, shall file an application with the Division, on forms provided by the Division, which shall include:
 - 1) Certification, on forms provided by the Division, of successful completion of an approved physical therapist or physical therapist assistant program in accordance with Section 1340.20;
 - 2) Certification from the state or territory of original licensure and the state in which the applicant is currently licensed and practicing, if other than original, stating the time during which the applicant was licensed in that state, whether the file on the applicant contains record of any disciplinary actions taken or pending, and the applicant's license number;
 - 3) The Division may waive the TOEFL and TSE examination for individuals who are licensed and have been actively practicing in another jurisdiction for 3 years prior to the date of application for licensure in Illinois;
 - 4) A report of the applicant's examination record forwarded directly from the test reporting service;

- 5) Complete work history since graduation from the physical therapist or physical therapist assistant program; and
- 6) The required fee specified in Section 1340.57.

The AAO acknowledges the petitioner's submission of the beneficiary's license to practice physical therapy in the State of Maryland; however, the record does not contain evidence that the beneficiary is licensed to practice physical therapy in the State of Illinois or is subject to an exemption from licensing in the State of Illinois. Although the FCCPT has provided a copy of a report evaluating the beneficiary's foreign education that was prepared for the State of Illinois, the record does not contain a copy of the beneficiary's receipt of a license from the State of Illinois. 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)). It is the beneficiary's Illinois license that was requested by the director and it is the beneficiary's Illinois license that the petitioner did not produce. Accordingly, the record in this matter does not establish that the beneficiary was eligible to practice physical therapy in the State of Illinois, at the work location specified on the LCA, when the petition was filed. For this reason, the petition will be denied.

The record is deficient in establishing that the beneficiary has complied with the Illinois law regarding licensure of physical therapists. The record does not establish that the beneficiary is qualified to perform the duties of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 361. The petitioner has not sustained that burden.

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