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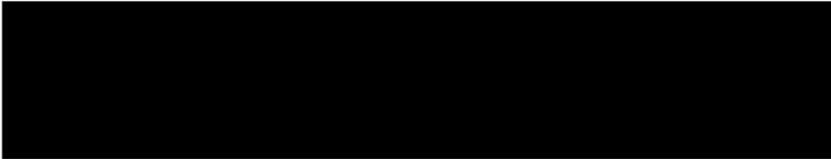
FILE: WAC 06 128 51422 Office: CALIFORNIA SERVICE CENTER Date: APR 03 2008

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.

*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 appeal will be dismissed. The petition will be denied.

The petitioner is a foster family agency and seeks to employ the beneficiary as a social worker. The petitioner 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 because the beneficiary is not qualified to perform the services of the offered specialty occupation. On appeal, counsel submits additional information and states that the proffered position does not require a license and/or the beneficiary is exempt from any license requirement, and therefore, qualified to perform the duties of the offered position.

The issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

As previously stated, the director denied the petition because the beneficiary is not licensed to work as a social worker in California. Thus, it is implicit in the director's decision that the proffered position qualifies as a specialty occupation. The AAO agrees. The Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that a bachelor's degree in social work is the most common minimum requirement to qualify for a job as a social worker; however, majors in psychology, sociology, and related fields may qualify for some entry-level jobs, especially in small community agencies. Although a bachelor's degree is sufficient for entry into the field, an advanced degree has become the standard for many positions. A master's degree in social work is typically required for positions in health settings and is required for clinical work as well. The *Handbook* further notes that all States and the District of Columbia have licensing, certification, or registration requirements regarding social work practice and the use of professional titles. The offered position qualifies as a specialty occupation.

The issue before the AAO is whether the beneficiary is qualified to perform the duties of a social worker in the

petitioner's business environment. The petitioner states that a license is not required to perform the duties of the proffered position, and that the beneficiary is otherwise qualified. The AAO does not agree.

In regulations governing foster family agencies in California, the regulation at 88065.3 provides that social work personnel shall be employed to provide the social services of foster family agencies. The regulation further provides, in part, that social work personnel must have a master's degree from an accredited or state approved graduate school, as defined in Section 94310 of the Education Code, in social work or social welfare, marriage, family, child counseling, child psychology, child development, counseling psychology or social psychology. Social work personnel who do not meet the Master's degree requirements may apply for an exception provided he/she completes coursework and field practice or experience requirements specified in the regulations at 88065.3(b)(2).

The record indicates that the beneficiary was granted an exemption from the Master's degree requirement on January 8, 2002, while employed by Interim Care FFA of Rancho Cucamonga, CA. The California Department of Social Services (the Department) granted the exemption provided that the beneficiary be supervised by a person who meets the supervision requirements outlined in Section 88065.3 of the regulations. The Department further stated that the exception was not transferable. The petitioner seeks to use the exemption granted to the beneficiary while employed by Interim Care FFA of Rancho Cucamonga, CA, which the Department clearly stated was not transferable, so as to establish the beneficiary's qualifications to perform the duties of the present position. The record does not establish that Interim Care FFA of Rancho Cucamonga, CA and the present petitioner [REDACTED] of Ontario, CA) are the same employer. Thus, it has not been established that the beneficiary is exempt from the Master's degree requirement. The record does not establish that the beneficiary possesses the education required for the position in California (a Master's degree), nor does the record establish that the beneficiary has been granted an exemption from that requirement by the Department which would enable her to work for the petitioner. As such, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position and the director's decision shall not be disturbed. Further, the petitioner did not provide evidence establishing that the beneficiary's supervisor possesses the necessary education and experience requirements set forth in Section 88065.2 of the regulations applicable to social work supervisors in foster family agencies. Simply going on the 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 190 (Reg. Comm. 1972)).

It should also be noted that while not all social workers need be licensed in California, those providing clinical social work, unless otherwise exempted, are required to be licensed. Clinical social work is defined by section 4996.9 of the California Business and Professions Code as follows:

**4996.9.** The practice of clinical social work is defined as a service in which a special knowledge of social resources, human capabilities, and the part that unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive social adjustments. The application of social work principles and methods includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with individuals, families, or groups; providing information and referral services; providing or arranging for the provision of social services; explaining or interpreting the psychosocial aspects in the situations of individuals, families, or

groups; helping communities to organize, to provide, or to improve social or health services; or doing research related to social work.

Psychotherapy, within the meaning of this chapter, is the use of psychosocial methods within a professional relationship, to assist the person or persons to achieve a better psychosocial adaptation, to acquire greater human realization of psychosocial potential and adaptation, to modify internal and external conditions which affect individuals, groups, or communities in respect to behavior, emotions, and thinking, in respect to their intrapersonal and interpersonal processes.

In its letter of February 28, 2006, the petitioner lists the beneficiary's duties. As stated by the petitioner, a portion of the beneficiary's duties include conducting "individual and family therapy." A second job description provided in response to the director's request for evidence clearly states that the beneficiary will "conduct individual and family therapy." Counsel states in his letter of June 16, 2006 that the beneficiary was granted an "exception from the licensing requirement." In support of that statement, a letter was provided from the California Department of Social Services dated January 8, 2002 wherein the beneficiary was granted an exception from education requirements for the position (the regulation requires a Master's degree) provided that the beneficiary is supervised in accordance with regulations while employed at Interim care FFA in Rancho Cucamonga, CA. The letter did not provide an exception to any licensing requirement. Counsel also states that the beneficiary does not require supervision by a licensed supervisor because the beneficiary is not a "therapist." This statement is contradicted by the duties of the position as provided by the petitioner which clearly indicate that the beneficiary will provide "individual and family therapy." The social services to be provided by the beneficiary fall within the regulatory definition of "clinical social work."

A clinical social work license, however, is not required in this instance. Section 4996.14 of the California Business and Professions Code states as follows:

4996.14. Nothing in this chapter shall restrict or prevent activities of a psychosocial nature or the use of the official title of the position for which they are employed on the part of the following persons, if those persons are performing those activities as part of the duties for which they are employed or solely within the confines or under the jurisdiction of the organization in which they are employed. However, they shall not offer to render clinical social work services, as defined in Section 4996.9, to the public for a fee, monetary or otherwise, over and above the salary they receive for the performance of their official duties with the organization in which they are employed:

....

(b) Persons employed in family or children services agencies.

....

The position offered to the beneficiary is with a "family or children services" agency regulated by the state of California. The duties of the proffered position may be performed by qualified individuals who do not hold a California clinical social work license. However, as discussed in the decision, the evidence does not establish that the petitioner is such an individual.

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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 and the appeal shall accordingly be dismissed.

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