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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: EAC 06 206 51546 Office: VERMONT SERVICE CENTER Date: **JUL 07 2009**

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)

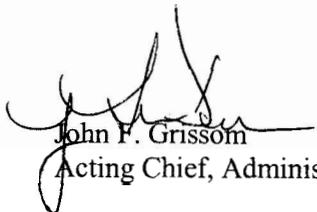
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant 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 nonprofit mental health service and training company that seeks to employ the beneficiary as a mental health paraprofessional. 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 Arkansas for the proposed position. On appeal, counsel contends that the director erred in denying the petition.

On the Form I-290B, counsel states, in pertinent part, the following:

We reviewed the [director's request for additional evidence] and found that a request for a copy of the beneficiary's license was NOT made in that letter. Please check your copy of the record.

What you requested in the letter of October 5, 2006 was evidence demonstrating that the employer, Ozark Guidance, is an institution of higher learning or an affiliated nonprofit entity for purposes of H-1B cap exemption [sic]. No mention was made for evidence regarding licenising [sic] in that letter. The first mention of a Request for Evidence of the beneficiary's license to practise [sic] the profession of Mental Health Paraprofessional was made in your most recent letter dated January 5, 2007 [the director's denial]. . . .

But, clearly, we cannot respond appropriately to a Request for Evidence that was never made. Please review your record. . . .

Counsel marked the box at section two of the Form I-290B to indicate that a brief and/or evidence would be sent within thirty days. The AAO did not receive this additional brief and/or evidence. As such, the AAO sent a follow-up facsimile to counsel on September 19, 2008, and requested that the additional brief and/or evidence be sent within five business days. Counsel, however, did not respond. Accordingly, the AAO deems the record complete and ready for adjudication.

Counsel's assertions with regard to the language of the director's October 5, 2006 request for additional evidence are incorrect. At page 3 of the director's request, he stated the following:

The prospective employee's qualifications appear to be based on an occupation that may require a license for an individual to fully perform the duties of the occupation.

Please submit the license or evidence from the appropriate licensing authority that no license is required.

As such, the record does not support counsel's assertion that the director's request for additional evidence did not raise the issue of licensure.

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.

The petitioner has now been placed on notice twice that U.S. Citizenship and Immigration Services (USCIS) will not approve the petition absent evidence either that the beneficiary possesses licensure, or that the beneficiary is not required to possess such licensure. On both occasions, the petitioner elected not to respond. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Accordingly, the record still lacks evidence that the beneficiary possesses the licensure to perform the duties of the proposed position, or that such licensure is not required. The record does not demonstrate that the beneficiary would be able to fully perform the duties of the proposed position, and the petition was properly denied. The petitioner has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

The petitioner has not established that the beneficiary meets, or is exempt from, 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.