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U.S. Citizenship and Immigration Services
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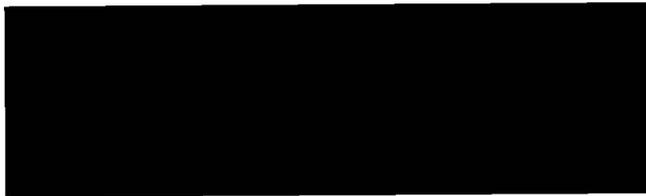
Date: OCT 02 2009

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.


Perry Rhew
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 sustained. The petition will be approved.

The petitioner is a 314-employee hospital that seeks to employ the beneficiary as a substance abuse and behavioral disorder counselor. The petitioner, therefore, endeavors to extend the beneficiary's classification 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 establish that the beneficiary qualifies to perform the duties of the proposed position.

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

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.

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.

The petitioner filed the instant petition on April 2, 2008. The director issued a request for additional evidence on April 8, 2008, and requested, among other items, evidence that the proposed position qualifies for classification as a specialty occupation, as well as evidence to establish either: (1) that the beneficiary possesses West Virginia licensure to perform the duties of the proposed position; or (2) that the duties of the proposed position do not require such licensure. The petitioner responded to the director's request on April 14, 2008, and submitted a letter from the petitioner's president. The director denied the instant petition on April 17, 2008, and the sole basis for denial was the director's determination that the petitioner had failed to establish either that the beneficiary possesses licensure to perform the duties of the position, or that such licensure is not required.

Newly-retained counsel submitted a timely appeal on May 19, 2008. Counsel submits a May 9, 2008 letter from the State of West Virginia Board of Examiners of Psychologists (the Board) which states, in pertinent part, the following:

In the State of West Virginia an individual providing substance abuse therapy and/or general therapy is not required to be licensed as the long as the individual is a full-time employee of a health care agency such as Highland Hospital.

The AAO finds that the Board's May 9, 2008 letter, as well as newly-retained counsel's citations to relevant West Virginia regulatory authorities, are sufficient to establish that licensure is not required to perform the duties of the proposed position. The AAO concurs with the director's

determination that the petitioner meets all other statutory requirements and, accordingly, the petition will be approved.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal will be sustained, and the petition approved.

ORDER: The director's April 17, 2008 decision is withdrawn. The appeal is sustained, and the petition is approved.