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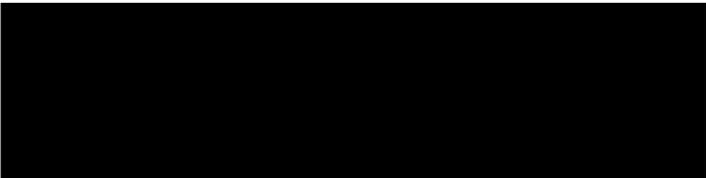
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

D2



FILE: EAC 07 133 52425 Office: VERMONT SERVICE CENTER Date: APR 30 2010

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:

SELF-REPRESENTED

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
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 describes itself as a firm that assigns its healthcare professionals to provide services in schools, nursing homes, hospitals, and mental health institutions nationwide. To employ the beneficiary as a Speech-Language Pathologist in the State of Florida, the petitioner endeavors to classify her 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 Form I-129 specifies an address at [REDACTED] as the location where the beneficiary would be assigned to work.¹

The director denied the petition on the basis that the petitioner had not provided documentary evidence from the pertinent State licensing authority to confirm the petitioner's assertion that the beneficiary met all of the requirements for Speech-Language Pathologist licensure except possession of a social security number. Further, as an indication of the record's deficiency of evidence with regard to the beneficiary's qualification for licensure, the director stated, "Additionally, while not addressed when additional information was requested, it is important to note that the beneficiary's academic credentials have not been evaluated as comparable to a United States Master's Degree."

As will be discussed below, based upon its review of the entire record of proceeding as supplemented by the petitioner's submissions on appeal, the AAO finds that the director was correct to deny the petition on the basis of the petitioner's failure to establish that the beneficiary possesses the requisite licensure to practice in the specialty occupation that is the subject of this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

The petitioner acknowledges that the State of Florida requires licensure as a condition precedent to a person performing services as a Speech-Language Pathologist, and that the beneficiary does not hold the requisite license. On appeal, the petitioner submits the type of foreign-degree evaluation that the director noted as absent. Therefore, the petitioner has overcome the director's concern with regard to the U.S. academic equivalency of the beneficiary's foreign educational credentials. However, the AAO does not agree with the petitioner's assertion, in its May 8, 2007 letter submitted on appeal, that the lack of a social security number precludes the beneficiary from applying for licensure.

Section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), states that an alien applying for classification as an H-1B nonimmigrant worker must possess "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation." The regulations on the

¹ As will be later addressed as a separate ground for dismissing the appeal, the Labor Condition Application (LCA) submitted with the petition is certified only for a location in New Jersey.

licensure requirements for H-1B and other H nonimmigrant classifications are at 8 C.F.R. §§ 214.2(h)(4)(v)(A) to (E).

Pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(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.”

Pursuant to 8 C.F.R. § 214.2(h)(4)(v)(B), 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.

Where licensure is required in any occupation, 8 C.F.R. § 214.2(h)(4)(v)(E) specifies that 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. This regulation also provides that 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 (1) obtained a permanent license in the state of intended employment, or (2) continues to hold a temporary license valid in the same state for the period of the requested extension.

It is U.S. Citizenship and Immigration Services (USCIS) policy to provisionally approve H-1B petitions for a one-year period where the only impediment to required licensure is the overseas alien beneficiary’s lack of a social security number. See Memorandum from Thomas E. Cook, Acting Assistant Commissioner, INS Office of Adjudications, *Social Security Cards and the Adjudication of H-1B Petitions*, HQ 70/6.2.8 (November 20, 2001) (hereinafter referred to as the Cook Memo). The Cook Memo’s continuing applicability is acknowledged in the Memorandum from Donald Neufeld, Deputy Associate Director, Domestic Operations, *Adjudicator’s Field Manual Update: Accepting and Adjudicating H-1B Petitions When a Required License Is Not Available Due to State Licensing Requirements Mandating Possession of a Valid Immigration Document as Evidence of Employment Authorization*, HQISD 70/6.2.8 (March 21, 2008) (hereinafter referred to as the Neufeld Memo). The Neufeld Memo amends the *Adjudicator’s Field Manual (AFM)* to instruct adjudicators to approve an H-1B petition for a one-year validity period if the object of the petition is a specialty occupation that requires licensure and the beneficiary has met all of the licensing jurisdiction licensure requirements except USCIS approval of the H-1B petition. In this matter, however, the record of proceedings fails to establish that the lack of a social security number or a valid immigration document are the only impediments to the beneficiary’s attaining the licensure required to practice as a Speech-Language Pathologist. Thus, the referenced policy is irrelevant to this appeal.

For the proposition that the beneficiary satisfies all of Florida's substantive requirements for licensure, the petitioner relies upon copies of (1) the academic transcripts of the beneficiary's post-secondary schooling in India; (2) a Clinical Practicum Certificate (Master of Science (Speech and Hearing)) from the All India Institute of Speech and Hearing; (3) a diploma from the University of Mysore, India, reflecting the award of a Master of Science Degree in Speech and Hearing; and (4) a VisaScreen Certificate, issued by The International Commission on Healthcare Professions, a division of the Commission on Graduates of Foreign Nursing Schools (CGFNS), stating that the beneficiary "has met all of the requirements of section 212(a)(5)(C) of the [Act], as specified in Title 8, Code of Federal Regulations section 212.15(f) for the Profession of: Speech-Language Pathologist."² However, the petitioner provides no documentation from the Florida Board of Speech-Language Pathology & Audiology (FBS-LP&A), the pertinent licensing authority, confirming that the beneficiary is qualified for licensure in all respects except possession of a social security number or valid immigration document.

Further, contrary to the petitioner's contention, the State of Florida does not exclude persons without a social security number from participating in the license application process. The petitioner correctly notes that the applicant's social security number is the first item specified in the petitioner's excerpt from the FBS-LP&A February 2007 document "Application Materials for Active Licensure by Evaluation or Endorsement." However, although not cited by the petitioner, section 456.013(b) of Title XXXII (Regulation of Professions and Occupations) of the Florida Statutes of 2007 specifically provide for license application by, and temporary licensure for, persons not holding a social security number. That provision reads:

If an applicant has not been issued a social security number by the Federal Government at the time of application because the applicant is not a citizen or resident of this country, the department may process the application using a unique personal identification number. If such an applicant is otherwise eligible for licensure, the board, or the department when there is no board, may issue a temporary license to the applicant, which shall expire 30 days after issuance unless a social security number is obtained and submitted in writing to the department. Upon receipt of the applicant's social security number, the department shall issue a new license, which shall expire at the end of the current biennium.

The petitioner's contention that lack of a social security number is the only impediment to the beneficiary obtaining the requisite license has no weight, as the petitioner fails to provide documentary evidence to support it. 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).

² Dated September 25, 2005 and valid until September 26, 2010, the VisaScreen Certificate was in effect when the petition was filed in April 2007.

Beyond the decision of the director, the AAO finds that the petition must also be denied on the additional ground that it is not supported by a Labor Condition Application (LCA) that corresponds to the location where the beneficiary would work. As noted earlier, the petition specifies an address at [REDACTED] as the location where the beneficiary would be assigned, but the LCA is certified only for a New Jersey location.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) expressly includes a certified LCA among the documents that a petitioner “shall submit” with an H-1B petition, and the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) states:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupation specialty in which the alien(s) will be employed.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) states that, when filing an H-1B petition, the petitioner must submit with the petition “[a] certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary.”

In order for a petition to be approvable, the LCA submitted for an H-1B petition must correspond to the location where the beneficiary would work, as that location determines the prevailing wage threshold that sets the minimum wage or salary that the petitioner must pay. As the LCA submitted for this petition does not correspond to the location where the beneficiary would work, it does not satisfy the regulatory requirements that the petition be filed with a corresponding LCA.

At the time of filing the petition the petitioner must file a certified LCA valid for the work location specified in part E of the LCA, and part F for an additional or subsequent work location. The work location is critical in determining the prevailing wage for the occupation in the area of intended employment. *See* 20 C.F.R. §§ 655.730(c)(4) and (d)(1).

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer’s petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.*

[*Italics added*]. The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the petition, and the petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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