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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:

Office: CALIFORNIA SERVICE CENTER

Date: DEC 29 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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.

On the Form I-129 visa petition the petitioner stated that it is a “provider of healthcare services.” To employ the beneficiary in what it designates as a physical therapist position, the petitioner endeavors to classify him 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, finding that the petitioner failed to establish that the beneficiary is appropriately licensed to practice physical therapy in Illinois, where the petitioner seeks to employ him, or is exempt from that requirement.

On appeal, counsel asserted that the director’s basis for denial was erroneous, as the beneficiary is permitted to practice physical therapy in Illinois under the direct supervision of a licensed physical therapist.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (2) the service center’s request for additional evidence (RFE); (3) the response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B and counsel’s brief in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petition can, in this case, be approved, notwithstanding that the beneficiary does not currently possess a license to practice physical therapy in Illinois.

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

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

In Illinois, licensure of physical therapists is addressed in 225 ILCS 90/2, which states:

Licensure requirement; exempt activities. Practice without a license forbidden - exception. No 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. After the effective date of this amendatory Act of 1990, no person shall practice or hold himself out as a physical therapist assistant unless he is licensed as such under this Act. A physical therapist shall use the initials "PT" in connection with his or her name to denote licensure under this Act, and a physical therapist assistant shall use the initials "PTA" in connection with his or her name to denote licensure under this Act.

It further provides, in pertinent part:

This Act does not prohibit:

\* \* \* \*

(2) The practice of physical therapy by those persons, practicing under the supervision of a licensed physical therapist and who have met all of the qualifications [for licensure] until the next examination is given for physical therapists or physical therapist assistants and the results have been received by the Department and the Department has determined the applicant's eligibility for a license. Anyone failing to pass said examination shall not again practice physical therapy until such time as an examination has been successfully passed by such person.

Thus, Illinois law permits the beneficiary to practice physical therapy under the direct supervision of a licensed physical therapist until such time as the physical therapy licensing examination is offered, and continuing until he receives the results of that examination.

Where, as here, a state or local license is required for an individual to fully perform the duties of an occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must generally have that license prior to approval of the petition. The regulation at 8 C.F.R. § 214.2(h)(4)(v)(A) states:

*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.

However, that section also provides for exceptions. The exception salient to this case is contained in 8 C.F.R. § 214.2(h)(4)(v)(C), which states, in pertinent part:

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.<sup>1</sup>

In the instant case, the evidence shows that the beneficiary is qualified, in every respect except licensure, to practice physical therapy, and that he has registered to take the examination for licensure in physical therapy in Illinois. Under these circumstances, the beneficiary is able to practice physical therapy under the supervision of a licensed physical therapist.

However, the visa petition states that the beneficiary would work at the petitioner's offices. The balance of the record, however, suggests that the petitioner does not treat patients there, but at various sites to which it assigns its workers. The petitioner has not identified the site to which the beneficiary would be assigned, and has not established that a licensed physical therapist works at that location and would supervise the beneficiary's practice of physical therapy. Because the beneficiary is not licensed to practice physical therapy in Illinois, approval of the visa petition is prohibited, in general, by 8 C.F.R. § 214.2(h)(4)(v)(A), and the petitioner has not demonstrated that the beneficiary qualifies for any of the exceptions to that prohibition. The appeal will be dismissed and the visa petition will be denied on this basis.

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. The appeal will be dismissed and the petition denied.

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

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<sup>1</sup> The regulation at 8 C.F.R. § 214.2(h)(4)(v)(E) additionally states that if the licensure requirement is excepted pursuant to 8 C.F.R. § 214.2(h)(4)(v)(C), or otherwise, the H-visa may be granted for only one year, and may not be renewed or granted again unless the alien has obtained a license, temporary or permanent, to practice the profession in the appropriate state.