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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



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

[REDACTED]

82

FILE: [REDACTED] Office: [REDACTED] Date: **APR 07 2011**

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:

[REDACTED]

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.

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 sustained. The petition will be approved.

On the Form I-129 visa petition the petitioner stated that it is a home health care firm. 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 had a license to practice physical therapy in [REDACTED] the state where the beneficiary would work, and failed to demonstrate that the beneficiary is otherwise eligible to practice physical therapy in [REDACTED] immediately upon entering the United States.

However, the regulation at 8 C.F.R. § 214.2(h)(4)(v)(B) states that if a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license a visa petition in the instant category may be approved.

Further, the record contains a letter, submitted on appeal, from the licensing manager of the [REDACTED] Board of Physical Therapy Examiners. That letter states in pertinent part that, if the board receives official notification that the beneficiary is registered to take the NPTE, the beneficiary will be entitled to a temporary license.

On August 4, 2010, the AAO issued a request for additional evidence (RFE) in this matter. The AAO requested that the petitioner provide evidence that the beneficiary was then eligible, upon entering the United States, to register to take the National Physical Therapy Examination (NPTE) and, upon registering, to receive a temporary license to practice physical therapy in [REDACTED]

In response, counsel submitted another letter from the licensing manager of the [REDACTED] Board of Physical Therapy Examiners. That letter states that temporary licenses are not issued until an applicant is registered to take the NPTE. That letter further states that the board does not approve an applicant's exam registration until he is in the United States. The record indicates that the beneficiary was not then in the United States, and could not, therefore, be issued a temporary license to practice physical therapy.

That letter was insufficient, however, to show that the beneficiary was eligible, upon entering the United States, to register to take the NPTE and, upon registering, to receive a temporary license to practice physical therapy in [REDACTED]

On December 2, 2010 the AAO issued another RFE. That letter stated:

The petitioner and counsel are hereby requested, a second time, to provide evidence that the beneficiary is now able, upon entering the United States, to register for the NPTE,

and, upon registering, to receive a temporary license to practice physical therapy in [REDACTED]. In the alternative, counsel and the petitioner may provide evidence that the beneficiary is now licensed, either temporarily or permanently, to practice physical therapy in [REDACTED].

In response to the second RFE the petitioner provided evidence sufficient to show that the beneficiary is registered to take the NPTE. Taken together with other evidence in the record, this documentation indicates that the beneficiary is able to receive a temporary license to practice physical therapy in [REDACTED].

Based upon its review of the entire record of proceeding, including the submissions on appeal and in response to the RFEs, the AAO finds that the petitioner has overcome the basis of the director's denial and that the petition is otherwise approvable. Therefore, the appeal will be sustained and the petition will be approved.

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 sustained that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved, valid from the date of this decision until October 1, 2011.