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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

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Date: **MAY 16 2011** Office: CALIFORNIA SERVICE CENTER FILE:

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.

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 medical laboratory testing firm. To employ the beneficiary in what it designates as a medical technologist 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 found that the petitioner failed to establish that the beneficiary has the license required to perform in the proffered position. The director found that the petitioner had not established, therefore, that the beneficiary is qualified to fully perform the duties of the proffered position pursuant to 8 C.F.R. § 214.2(h)(4)(v) and denied the visa petition on this basis. On appeal, counsel asserted that the petitioner had satisfied all evidentiary requirements.

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

The director's finding that the petitioner had not demonstrated that the beneficiary is qualified for the proffered position rested on the petitioner's failure to provide a requested item of evidence. Specifically, the RFE issued on June 26, 2009 stated:

Licensure: Submit a copy of the beneficiary's permanent Medical Technologist license. If the beneficiary is not in the possession of a permanent unrestricted license, submit a temporary license, interim permit or other authorization issued by the agency that authorizes the beneficiary to practice the profession. If the petitioner contends that the beneficiary is exempt from the usual licensing requirements, or a license is not required, provide a letter from the appropriate State Licensing agency attesting to the beneficiary's exemption.

In a letter provided with the petition, the petitioner's CEO had stated that Illinois, the state in which the beneficiary would work, does not require licensure of medical technologists. In response to that RFE, counsel reiterated that assertion. Counsel also provided a list of statutes governing professions licensed by the State of Illinois in support of that assertion, noting that medical technologist is not listed among those professions. The director's denial of the visa petition, however, was based on the petitioner's failure to provide the requested letter from the state agency that licenses medical technologists.

On appeal, counsel provided a printout of web content from a site maintained by the State of Illinois entitled, "A Guide to Health Careers in Illinois." The section of that printout pertinent to medical

technologists and clinical laboratory scientists states, "Presently there are no state licensure laws in Illinois for medical laboratory personnel." Counsel also provided an affidavit from an attorney employed by counsel's firm attesting that he made numerous attempts to obtain such a letter from a state agency but that his requests were repeatedly rebuffed as the state does not regulate this occupation.

The evidence provided indicates that Illinois does not require licensure of medical technologists. Further, a website maintained by the State of Illinois at <<http://www.idfpr.com/dpr/proflist.asp>> listing the various professions regulated in that state corroborates this evidence in that the occupation of medical technologist is not listed among them.

Typically, failure to provide requested material evidence is a basis for dismissal pursuant to 8 C.F.R. § 103.2(b)(14). In this case, however, the AAO finds credible the evidence that shows that Illinois does not license medical technologists and that it in fact may have been impossible to fully comply with the director's specific request given the state's refusal to provide the letter requested. As such, the beneficiary has overcome any evidentiary deficit occasioned by the failure to produce a license or a letter from an Illinois state agency. Further, the AAO finds there is sufficient evidence to conclude that a license is not *currently* required by the State of Illinois to perform the duties of a medical technologist in that state.

The petitioner has overcome the sole basis for denial of the visa petition, and no other basis of ineligibility is apparent in the record. Therefore, the appeal will be sustained, and the visa petition will be approved.

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