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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]

Dr

Date: JUL 05 2012

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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:

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.

The petitioner provides therapy and special instruction for children with disabilities, and it seeks to employ the beneficiary as [REDACTED] in the State of New York. The petitioner, therefore, endeavors to classify the beneficiary 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, determining that the petitioner had not provided the beneficiary's required certification as a speech language pathologist in accordance with section 212(a)(5)(C) of the Act, 8 U.S.C. § 1182(a)(5)(C), and thus was not qualified to perform the services of a specialty occupation. On appeal, the petitioner contends that the director's findings were erroneous and submits a brief in support of this contention.

The record of proceeding before the AAO contains: (1) the Form I-129 with supporting documentation; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the RFE; (4) the denial letter; and (5) the Form I-290B and supporting documentation.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has overcome the director's sole ground for denying this petition.

The regulation at 8 C.F.R. § 212.15 in pertinent part provides:

(a) *General certification requirements.*

- (1) Except as provided in paragraph (b) or paragraph (d)(1) of this section, any alien who seeks admission to the United States as an immigrant or as a nonimmigrant for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible unless the alien presents a certificate from a credentialing organization, listed in paragraph (e) of this section.

The failure of the petitioner to provide a certificate of foreign health care worker is not at issue. The certificate of foreign health care worker is required at the time the appropriate official determines whether the beneficiary is admissible to the United States. Foreign health care worker certification is decided by the consular official at the time of the beneficiary's visa interview, and by an officer of the Department of Homeland Security when the beneficiary is admitted to the United States. 8 C.F.R. § 212.15(d)(1).<sup>1</sup> The AAO notes that a finding that the beneficiary does not have the

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<sup>1</sup> The director must also determine whether the beneficiary is admissible to the United States, e.g., whether she has the requisite foreign health care worker certification, at the time any application for extension of stay is adjudicated. 8 C.F.R. § 214.1(a)(3)(i) (requiring in part that "[e]very nonimmigrant alien who applies for

required health care worker certification is a finding that the beneficiary is inadmissible to the United States; the beneficiary's admissibility, however, is not a proper ground to deny an H-1B petition.

The director incorrectly denied the petition on the basis that the beneficiary is subject to the foreign health care worker certification and is thereby inadmissible. In accordance with 8 C.F.R. § 214.2(h)(15)(i), even though the request for H-1B nonimmigrant status is combined with the request to extend the stay of the beneficiary, "the director shall make a separate determination on each." Consequently, the director's finding relevant to the instant H-1B petition is withdrawn. As the beneficiary is otherwise qualified to perform the duties of the proffered position, the petition shall be approved. The director shall make a separate determination on the petitioner's extension of stay request, which may not be appealed. *See* 8 C.F.R. §§ 214.1(c)(5) and 214.2(h)(10)(ii).

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 sustained that burden.

**ORDER:** The appeal is sustained. The director's September 16, 2010 decision is withdrawn, and the petition is approved.

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admission to, or an extension of stay in, the United States, must establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act").