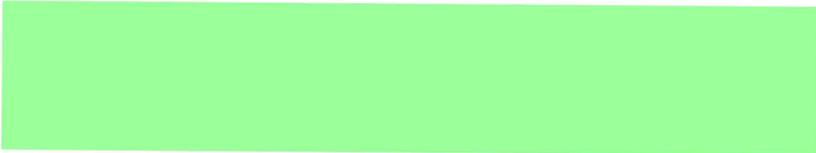




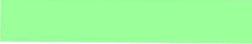
U.S. Citizenship  
and Immigration  
Services

(b)(6)

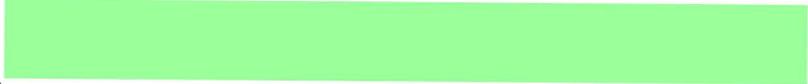


Date: **MAR 01 2013**

Office: CALIFORNIA SERVICE CENTER

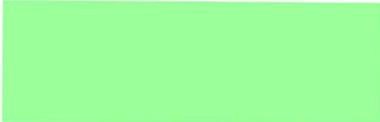
FILE: 

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting 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 director's decision of denial will be withdrawn. The petition will be remanded to the director for further proceedings consistent with this decision.

On the Form I-129 visa petition the petitioner stated that it is a healthcare facility with three employees. To employ the beneficiary in what it designates as a clinical dietitian position, 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 director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

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 2585 of the California Business and Professions Code states:

(a) Any person representing himself or herself as a registered dietitian shall meet one of the following qualifications:

(1) Been granted, prior to January 1, 1981, the right to use the term "registered dietitian" by a public or private agency or institution recognized by the State Department of Health Services as qualified to grant the title, provided that person continues to meet all requirements and qualifications periodically prescribed by the agency or institution for the maintenance of that title.

[or]

(2) Possess all of the following qualifications:

(A) Be 18 years of age or older.

(B) Satisfactory completion of appropriate academic requirements for the field of dietetics and related disciplines and receipt of a baccalaureate or higher degree from a college or university accredited by the Western Association of Schools and Colleges or other regional accreditation agency.

(C) Satisfactory completion of a program of supervised practice for a minimum of 900 hours that is designed to prepare entry level practitioners through instruction and assignments in a

clinical setting. Supervisors of the program shall meet minimum qualifications established by public or private agencies or institutions recognized by the State Department of Health Services to establish those qualifications.

- (D) Satisfactory completion of an examination administered by a public or private agency or institution recognized by the State Department of Health Services as qualified to administer the examinations.
- (E) Satisfactory completion of continuing education requirements established by a public or private agency or institution recognized by the State Department of Health Services to establish the requirements.

(b) [Pertinent to dietetic technicians]

\* \* \*

- (c) It is a misdemeanor for any person not meeting the criteria of subdivision (a) or (b) to use, in connection with his or her name or place of business, the words "dietetic technician, registered," "dietitian," "dietician," "registered dietitian," "registered dietician," or the letters "RD," "DTR," or any other words, letters, abbreviations, or insignia indicating or implying that the person is a dietitian, or dietetic technician, registered or registered dietitian, or to represent, in any way, orally, in writing, in print or by sign, directly or by implication, that he or she is a dietitian or a dietetic technician, registered or a registered dietitian.

Based upon its review of the entire record of proceeding, including the submissions on appeal addressing the grounds for the director's decision, the AAO finds that the petitioner has overcome the sole basis of the director's denial. That is, the petitioner has demonstrated that, more likely than not, the proffered position is a dietitian position and that, in California, the state of intended employment, entry into such a position requires the equivalent of at least a bachelor's degree in dietetics. Therefore, the decision of the director, finding that the petitioner failed to demonstrate that the proffered position is a specialty occupation position, is withdrawn.

However, the record suggests an issue that was not addressed in the decision of denial but that, nonetheless, precludes approval of this visa petition. Section 2585 of the California Business and Professional Code, set out above, states that for a person who does not meet the requirements of that section to work as a dietitian or to hold him or herself out to be a dietitian is a misdemeanor. The record contains no indication that the beneficiary is qualified, pursuant to that section of law, to work as a dietitian in California.

For the visa petition to be approved, the petitioner would be obliged to show that the beneficiary was qualified to work as a dietitian and to hold herself out as a dietitian in California, or was entitled to

an exemption from that requirement. Accordingly, the matter will be remanded for the director to issue a new decision in this matter.

Further, evidence in the record shows that the petitioner is licensed to house a combined total of 24 residential patients at four different locations. This appears inconsistent with the assertion, made in the visa petition, that the petitioner has only three individuals employed in its four locations. If the director decides to exercise her discretion to again request further evidence in this matter pursuant to 8 C.F.R. 103.2(b)(8), she may accord the petitioner an opportunity to explain this apparent discrepancy.

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 been met only in part. Accordingly, the director's decision will be withdrawn, and the matter will be remanded for entry of a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to the director for further action consistent with the above and entry of a new decision.