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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[redacted]

File: WAC 02 068 52693 Office: California Service Center Date: MAR 19 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: [redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a health care provider. It seeks to employ the beneficiary permanently in the United States as a physical therapist. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification.

The petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The director determined that the petitioner had not established that the beneficiary is qualified to take the State's written licensing examination for physical therapists, or that she holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment.

On appeal, counsel submits a brief.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

In this case, the petitioner has filed an Immigrant Petition for Alien Worker (Form I-140) for classification under section 203(b)(3)(A)(i) of the Act as a skilled worker (physical therapist). Aliens who will be employed as physical therapists are listed on Schedule A. Schedule A is the list of occupations set forth at 20 C.F.R. § 656.10 with respect to which the Director of the United States Employment Service has determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

On March 6, 2002, the director requested that the petitioner submit evidence that the beneficiary is qualified to take that State's written licensing examination for physical therapists or that she holds a full and unrestricted license to practice nursing in the state of intended employment.

In response, Counsel submitted a copy of a letter, dated April 15, 2002, from the State Department of Consumer Affairs Physical

Therapy Board of California stating that the beneficiary had passed California Laws Examination. The record of proceedings already contained a previous letter, dated August 14, 2001, also from the Physical Therapy Board. That letter stated that the beneficiary's credentials had been reviewed and approved, and that the beneficiary was recommended to appear for the National Physical Therapy Examination.

The Director, California Service Center, found that the petitioner had submitted insufficient evidence that the beneficiary is qualified to take the state licensing exam, and denied the petition on June 19, 2002.

On appeal, counsel submits another copy of the April 15, 2002 letter, and states that the evidence is sufficient to demonstrate that the beneficiary is qualified to take the examination.

The two letters cited above, taken together, are sufficient to demonstrate that the beneficiary is qualified to take the state licensing examination for physical therapists and, in fact, has taken and passed that examination.

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 met that burden. The appeal will be sustained.

ORDER: The appeal is sustained.