



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF Q-D- INC.

DATE: DEC. 28, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a laboratory services provider, seeks to temporarily employ the Beneficiary as a clinical laboratory scientist under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Beneficiary possesses the required license for the proffered position.

In response to a Notice of Intent to Dismiss and Request for Evidence (NOID/RFE) issued by this office, the Petitioner submits additional evidence in support of the petition.

Upon *de novo* review, we will sustain the appeal.

I. LAW

The regulation at 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

In addition, the regulation at 8 C.F.R. § 214.2(h)(4)(v)(C) states (emphasis added):

- (2) An H-1B petition filed on behalf of an alien who does not have a valid state or local license, where a license is otherwise required to fully perform the duties in that occupation, may be approved for a period of up to 1 year if:

- (i) The license would otherwise be issued provided the alien was in possession of a valid Social Security number, was authorized for employment in the United States, or met a similar technical requirement; and
- (ii) The petitioner demonstrates, through evidence from the state or local licensing authority, that the only obstacle to the issuance of a license to the beneficiary is the lack of a Social Security number, a lack of employment authorization in the United States, or a failure to meet a similar technical requirement that precludes the issuance of the license to an individual who is not yet in H-1B status. *The petitioner must demonstrate that the alien is fully qualified to receive the state or local license in all other respects, meaning that all educational, training, experience, and other substantive requirements have been met.* The alien must have filed an application for the license in accordance with applicable state and local rules and procedures, provided that state or local rules or procedures do not prohibit the alien from filing the license application without provision of a Social Security number or proof of employment authorization or without meeting a similar technical requirement.

II. ANALYSIS

Upon our review of the entire record of proceedings, including the response to our NOID/RFE, we conclude that the Petitioner has now established by a preponderance of the evidence that the Beneficiary qualifies for a temporary exception to the licensure requirement.

As a clinical laboratory scientist in the State of California, the Beneficiary must acquire a California clinical laboratory scientist license. As such, the Petitioner must demonstrate that the Beneficiary is fully qualified to receive the license in all respects, other than the requirement for a Social Security number. That is, the Petitioner must show that all educational, training, experience, and other substantive requirements for licensure have been met.

In response to our NOID/RFE, the Petitioner submits the required documentation to establish that the educational and training requirements for licensure had been met at the time of filing the instant petition. Specifically, the Petitioner submits an updated academic evaluation of the Beneficiary's credentials and a letter demonstrating the Beneficiary's completion of the required post-baccalaureate training and experience. Accordingly, we conclude that the record of proceedings now contains sufficient evidence to meet the requirements under 8 C.F.R. § 214.2(h)(4)(v)(C), and the H-1B petition may be approved for a period of up to one year.

Matter of Q-D-, Inc.

III. CONCLUSION

We conclude that the evidence of record establishes that the Beneficiary qualifies for a temporary exception to the licensure requirement under 8 C.F.R. § 214.2(h)(4)(v)(C).

ORDER: The appeal is sustained.

Cite as *Matter of Q-D- Inc.*, ID# 541440 (AAO Dec. 28, 2017)