



May 20, 2009

Memorandum

TO: Service Center Directors

FROM: Barbara Q Velarde /s/
Chief, Service Center Operations

SUBJECT: Requirements for H-1B Beneficiaries Seeking to Practice in a Health Care Occupation.¹

Purpose

This memorandum clarifies the standards for adjudicating H-1B petitions filed on behalf of beneficiaries seeking employment in a health care specialty occupation.

Adjudicators, as a starting point, can consult the U.S. Bureau of Labor Statistics' Occupational Outlook Handbook (OOH) to determine whether the position being offered qualifies as a specialty occupation as defined by Section 214(i)(1) of the Immigration and Nationality Act (INA or Act), consistent with the requirements found in INA 214(i)(2). Adjudicators should be mindful, however, that in certain instances, other authoritative sources exist that indicate whether the position in question qualifies as a specialty occupation (e.g., State licensing board standards). Thus, the OOH is not determinative in all cases. Whenever more than one authoritative source exists, an adjudicator should consider all of the evidence presented to determine whether a beneficiary qualifies to perform in a specialty occupation. Specific guidance on health care occupation standards is included below.

Guidance for Petitions in Which the Beneficiary Is in Possession of a License²

This guidance applies to H-1B beneficiaries in possession of either an unrestricted or a restricted license to practice a health care occupation in the state of intended employment. If the petitioner provides documentary evidence that the beneficiary has a valid license to practice a health care

¹ For purposes of this memorandum, "health care occupation" refers to those professions enumerated under 8 CFR 212.15(c) **and** meet the definition of specialty occupation, as defined at 8 CFR 214.2(h)(4)(ii)(4).

² If the beneficiary has a license to practice the health care occupation in a state *other* than the state in which he/she will be working, the adjudicator should refer to the section of this memorandum entitled "Guidance for Petitions in Which the Beneficiary Is Not in Possession of a License".

occupation in the state in which the beneficiary will be employed, the adjudicator should not look beyond the license. The beneficiary will be considered to meet the qualifications to perform services in a specialty occupation as outlined in 8 CFR 214.2(h)(4)(iii)(C)(3). However, the petitioner will still need to provide evidence that the beneficiary is admissible under Section 212(a)(5)(C) of the Act.³

This guidance applies regardless of whether the beneficiary is in possession of a bachelor's degree, master's degree, or doctoral degree in the health care occupation.

If the beneficiary is in possession of an *unrestricted* license, and the petition is otherwise approvable, an adjudicator should approve the petition for the full H-1B period requested -- up to three years -- but may not approve the petition beyond the validity of the labor condition application (LCA). Please be advised most states require a license to be renewed periodically. If the beneficiary is in possession of an unrestricted license, the renewal date should not be considered when determining the validity period of the approval.

If the beneficiary is in possession of a *restricted* license (e.g., license approved except for mandatory supervised practice), and the petition is otherwise approvable, an adjudicator should approve the petition for a period of one year, or the duration of the restricted license, whichever is longer.⁴

Guidance for Petitions in Which the Beneficiary Is Not in Possession of a License

In order to perform in a health care occupation, the beneficiary must obtain a license from the state in which he/she will be working. As such, the beneficiary must meet the licensure provisions for H classifications.⁵ If the petitioner states that the beneficiary cannot obtain a license to practice the health care occupation in the state in which the beneficiary will be employed due to the fact that the state's statutes mandate possession of a social security card⁶ and/or a valid immigration document as evidence of employment authorization,⁷ the adjudicator must ascertain the requirements for licensure (including educational degree requirements) in the health care occupation in that state to determine whether the beneficiary is qualified to perform

³ All aliens who wish to enter the United States to practice in a health care occupation other than as a physician must be found to be admissible under Section 212(a)(5)(C) of the Act. If the petitioner fails to provide evidence that the beneficiary received a certificate from a recognized credentialing organization as outlined in 212(a)(5)(C) of the Act, the beneficiary may still qualify for classification as an H-1B non-immigrant. If the beneficiary is seeking to extend status or change status, and the petitioner fails to provide the requisite credentialing evidence, the request for extension or change of status should be denied as the beneficiary is inadmissible under Section 212(a)(5)(C) of the Act. If the beneficiary is seeking a non-immigrant visa at a consulate, Department of State (DOS) must be informed of the potential inadmissibility issue.

⁴ See 8 CFR 214.2(h)(4)(v)(E)

⁵ See 8 CFR 214.2(h)(4)(v).

⁶ See Memorandum From Thomas E. Cook, Acting Assistant Commissioner, Office of Adjudications, INS, "Social Security Cards and the Adjudication of H-1B Petitions," HQ 70/6.2.8 (November 20, 2001).

⁷ See Memorandum From Donald Neufeld, Deputy Associate Director, Domestic Operations, USCIS "Adjudicator's Field Manual Update: Chapter 31: Accepting and Adjudicating H-1B Petitions When a Required License is not Available Due to State Licensing Requirements Mandating Possession of a Valid Immigrant Document as Evidence of Employment Authorization," HQ 70/6.2.8 (March 21, 2008).

the specialty occupation as outlined in 214(i)(2) of the INA; 8 CFR 214.2(h)(4)(iii)(C). If after conducting research the adjudicator is unable to determine the state's requirements for licensure, the adjudicator may send the petitioner a request for evidence (RFE) asking the petitioner to provide documentary evidence of the state's requirements.

Furthermore, the petitioner will need to provide evidence that the beneficiary:

- Has filed an application for a license in accordance with state or local rules and procedures; and
- Cannot obtain a full unrestricted license in the state in which he/she will practice due to the requirement for possession of a social security card, valid immigration document, and/or physical presence in the United States in the form of a letter from the State Board.

Assuming a petition is approvable under the above standards, the validity period should be one year. The approval of any such H-1B petition shall not constitute approval by USCIS for the alien beneficiary to engage in any activity requiring possession of such State or local license. It is merely a means to facilitate the state or local licensing authority's issuance of such a license to the alien, provided all other requirements are satisfied.

If the petitioner later requests an extension of stay on behalf of the beneficiary, the petitioner must demonstrate that the beneficiary has been granted a valid unrestricted license to practice the health care occupation in the state in which he/she will be working. If the beneficiary does not have the valid unrestricted license at the time the extension of stay petition is filed, the petition will be denied.

Use

This memorandum is intended solely for the instruction and guidance of USCIS personnel in performing their duties relative to adjudications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner. In addition, the instructions and guidance in this memorandum are in no way intended to and do not prohibit enforcement of the immigration laws of the United States.

Questions regarding this guidance should be directed through appropriate channels to the Office of Service Center Operations.