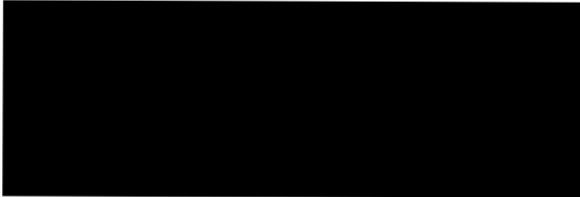


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Di

FILE: SRC 04 165 51014 Office: TEXAS SERVICE CENTER

Date: **JUN 22 2006**

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a pharmacy staffing company. It seeks to employ the beneficiary as a pharmacy assistant/intern and to classify him 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 on the ground that the beneficiary did not have a license to work as a pharmacy intern in Mississippi, the intended state of employment, as required under Mississippi law.

On appeal the petitioner acknowledges that the beneficiary is not licensed to practice as a pharmacy intern in the State of Mississippi, which requires a license, but asserts that the beneficiary will work for a client in the State of Arizona, where he is licensed to work as a pharmacy intern. In support of the appeal the petitioner submits a new Labor Condition Application (LCA), certified by the Department of Labor (DOL), identifying Benson, Arizona as the beneficiary's work location.

As specified in 8 C.F.R. § 214.2(h)(4)(i)(B)(1):

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

The record shows that the petitioner filed its Form I-129 petition on May 24, 2004, requesting H-1B classification for the beneficiary in the proffered position for the two-year period of October 1, 2004 through October 1, 2006. The petition identified the beneficiary's work location as Ridgeland, Mississippi. The petition was accompanied by an LCA, certified by the DOL on April 28, 2004, which also identified Ridgeland, Mississippi as the beneficiary's work location. No additional or subsequent work location was identified in the space indicated on the LCA.

Following the denial of the petition on November 24, 2004, the petitioner filed a timely appeal on December 27, 2004. The appeal was accompanied by the new LCA, which had been certified by the DOL on August 27, 2004 for a two-year period from August 27, 2004 to August 27, 2006. The new LCA identified Benson, Arizona as the work location for the proffered position.

The DOL's certification of the new LCA postdated the filing of the H-1B petition by more than three months. Thus, the petitioner did not obtain the requisite labor certification "[b]efore filing a petition for H-1B classification," as required by the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1). Moreover, a petitioner may not make material changes to its petition in an effort to make a deficient petition conform to legal requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm. 1998). At the time the petition was filed the work location of the proffered position was identified not as Benson, Arizona, but as Ridgeland, Mississippi, where the beneficiary is not licensed to practice as a pharmacy intern. Accordingly, the petitioner has failed to establish the beneficiary's eligibility for classification as a nonimmigrant worker employed in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act.

SRC 04 165 51014

Page 3

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.