

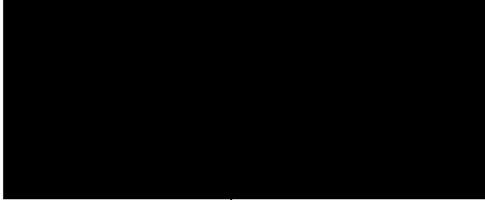
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 06 207 52437 Office: VERMONT SERVICE CENTER Date: **OCT 04 2007**

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:**

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a hospital. It initially sought to employ the beneficiary as a pharmacist. It endeavored to classify the beneficiary 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).

On August 11, 2006, the director denied the petition determining that the record did not establish that the beneficiary is a licensed pharmacist in the District of Columbia or is immediately eligible to practice as a registered pharmacist in the District of Columbia. Counsel for the petitioner submitted a Form I-290B, Notice of Appeal on September 12, 2006 and submitted a brief in support of the appeal received by the AAO on October 11, 2006. The record also contains an undated notice from the petitioner received by the Vermont Service Center on October 16, 2006 and forwarded and received by the AAO on November 20, 2006. The petitioner notified CIS in this letter that it no longer employed the beneficiary as of October 6, 2006. Thus, the AAO considers the appeal moot.

To establish eligibility for H-1B classification, the petitioner must be a U.S. employer or agent, the entities authorized by regulation to file a Form I-129 to classify an individual as an H-1B worker.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), a petitioner qualifies as a U.S. employer, if it:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax Identification Number.

The petitioner's notice establishes that it is no longer the beneficiary's employer and the record does not contain evidence the petitioner is an agent. While the petitioner has not withdrawn the appeal in this proceeding, as the petitioner no longer employs the beneficiary, the issues in this proceeding are moot. Therefore, this appeal is dismissed. The petition is denied.

**ORDER:** The appeal is dismissed as moot. The petition is denied.