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U.S. Department of Homeland Security  
Citizenship and Immigration Services

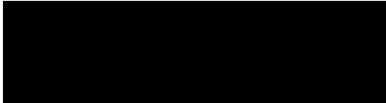
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



FILE: EAC-02-095-50101 OFFICE: VERMONT SERVICE CENTER

DATE: DEC 24 2003

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)

IN BEHALF OF PETITIONER:



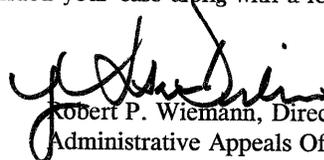
**INSTRUCTIONS:**

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 Citizenship and Immigration Services (CIS) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a pharmacy that employs four persons and has a gross annual income of one million dollars. It seeks to employ the beneficiary as a pharmacy manager. The director denied the petition because the petitioner failed to establish that the offered position qualified as a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the position qualifies as a specialty occupation.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The letter accompanying the I-129 petition described the beneficiary's duties as:

[Having] the authority to manage and control a pharmaceutical inventory, the purchase of new pharmaceuticals and the purchase of generic drugs, in place of and instead of name brand pharmaceuticals.

In addition, he will also be responsible for ordering and purchasing a wide array of non-prescription pharmaceuticals which [sic] are generally relied upon on a daily basis by millions of customers.

The letter further stated that the beneficiary would not mix or dispense pharmaceuticals. Nevertheless, it mentioned that the beneficiary's knowledge of pharmaceuticals would allow him to be a professional ombudsman, dealing with the public and answering questions unrelated to the direct dispensation of pharmaceutical drugs. Moreover, the letter stated that candidates for the proposed position must possess a degree in pharmacy to maintain the inventory of non-prescription medications.

On March 15, 2002, the Immigration and Naturalization Service (the Service) requested additional information: (1) a statement describing the degree and/or course work required for the offered position; (2) a complete job description; and (3) documentary evidence that the beneficiary has the required degree. The director stated that the beneficiary did not appear to have a degree in management, notwithstanding the title of the position: pharmacy manager.

In response, counsel submitted a letter, dated April 10, 2002, in which he stated that the Service erroneously believed that the

beneficiary obtained the equivalent of a bachelor's degree in pharmacy based on work experience. The beneficiary, counsel asserted, holds a degree from the University of Mysore, India, and that Morningside Evaluations and Consulting consider it equivalent to a bachelor's degree in pharmacy from an institution of higher learning in the United States. Counsel submitted a copy of the previously submitted educational evaluation. Counsel also submitted a page from the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* delineating a pharmacist's duties while working as a pharmacy manager. Counsel stated that pharmacy managers analyze all brand and generic drugs; determine which pharmaceuticals to reorder; explain to customers the inherent reliability, efficacy, and suitability of certain drugs, including possible side effects and conflicts with other medications; and oversee the activities of a pharmacy such as ensuring that the pharmacists perform their job duties correctly.

On August 2, 2002, the Service denied the petition. The Service stated that the evidence did not establish that the beneficiary holds a degree in the specialty area of administrative management; therefore, the position did not require a bachelor's degree in the area of pharmacy management. Furthermore, the Service stated that the beneficiary does not have experience as a manager that has been recognized by an authority. The Service stated that counsel claimed that the beneficiary's degree in pharmacy is in a closely related field, qualifying the beneficiary for the position, and the Service noted that the beneficiary holds a degree, and that a specialty occupation requires a degree. However, the Service stated that, if a degree is required in this immediate petition, it must be in the specialty area of management. The beneficiary's degree in pharmacy, the Service stated, is not related to the duties of the offered position.

The Service stated that the DOL's *Occupational Outlook Handbook* (the *Handbook*) did not set a minimum requirement to perform the duties of the proposed position, except to state that a bachelor's degree is a prerequisite for most employers, and that some employers prefer persons holding graduate degrees for more complex positions. The Service stated that the *Handbook* did not report that the proposed position requires candidates to hold a bachelor's degree in a specific specialty.

The Service stated that the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) allows it to determine whether the degree required by the specialty occupation has been acquired by the alien through a combination of education, specialized training, and/or work experience in areas related to the specialty, and whether the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. The Service stated that it uses an

independent evaluation of a person's foreign credentials as an advisory opinion, and that the educational evaluator determined that the beneficiary's degree is in pharmacy, but not the management of a pharmacy. Thus, the Service gave the evaluation little or no weight, and stated that the record did not clearly demonstrate that the beneficiary's educational training included the theoretical and practical application of the specialized knowledge required by the position.

The Service found that the proffered position did not appear to require candidates to possess a bachelor's degree or its equivalent in management. The Service stated that the beneficiary's duties were unrelated to the course curriculum, and that the proposed position did not require candidates to possess a bachelor's degree or its equivalent in a specific specialty. Thus, the Service found that the proffered position did not qualify as a specialty occupation.

For the proffered position to qualify as a specialty occupation, the petitioner must establish one criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel claims, on appeal, that the petitioner has satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that a baccalaureate or its equivalent in pharmacy is the minimum for entry into the proffered position. Counsel cites the DOT's description of pharmacy managers to claim that the proposed position is classified as a medical service position, not a business or management position, and that the DOL acknowledges that a degree in pharmacy is relevant for the position. Counsel also submits advertisements to support this statement.

Counsel's statements and evidence are insufficient to establish the first criterion. In the first place, Citizenship and Immigration Services (CIS) looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation. Second, the Department of Labor has replaced the DOT with the *Occupational Information Network (O\*Net)*. Both the DOT and O\*Net provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The Department of Labor's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. Thus, the 2002-2003 edition of the *Handbook* is instructive in determining whether a position requires a baccalaureate or higher degree or its equivalent for entry into the occupation.

The *Handbook* shows, on page 295, that the beneficiary's duties resemble those performed by pharmacy technicians and pharmacy aides. According to the *Handbook*, pharmacy technicians help licensed pharmacists provide medication and other healthcare products to patients. Technicians, the *Handbook* states, refer any questions regarding prescriptions, drug information, or health matters to a pharmacist. Moreover, the *Handbook* reports that pharmacy technicians who work in retail pharmacies have varying responsibilities, depending on State rules and regulations. Technicians may establish and maintain patient profiles, prepare insurance claim forms, and stock and take inventory of prescription and over-the-counter medications. Thus, like pharmacy technicians, the beneficiary will stock the pharmacy's inventory by purchasing generic and name brand pharmaceuticals.

The *Handbook* also states that pharmacy aides work closely with pharmacy technicians. They are often clerks or cashiers who primarily answer telephones, handle money, stock shelves, and perform other clerical duties. Pharmacy technicians, the *Handbook* notes, usually perform more complex tasks than do pharmacy aides, although, in some States, their duties and job titles overlap.

With respect to the training, qualifications, and advancement for pharmacy technician and aide positions, on pages 295-296, the *Handbook* reports that, although most pharmacy technicians receive informal on-the-job training, employers favor those who have completed formal training and certification. However, there are currently few State and no Federal requirements for formal training or certification of pharmacy technicians. According to the *Handbook*, employers who can neither afford, nor have the time to give, on-the-job training often seek formally educated pharmacy technicians. Formal education programs and certification emphasize the technicians' interest in and dedication to the work to potential employers. In addition to the military, some hospitals, proprietary schools, vocational or technical colleges, and community colleges offer formal education programs.

The *Handbook* explains that formal pharmacy-technician education programs require classroom and laboratory work in a variety of areas, including medical and pharmaceutical terminology, pharmaceutical calculations, pharmacy recordkeeping, pharmaceutical techniques, and pharmacy law and ethics. Technicians also are required to learn medication names, actions, uses, and doses. Many training programs include internships, in which students gain hands-on experience in actual pharmacies. Students receive a diploma, certificate, or an associate degree, depending on the program.

Thus, the *Handbook* reports that employers do not require candidates to possess a bachelor's degree or its equivalent to perform the duties of the offered position.

With respect to counsel's advertisements, they reveal that employers seeking candidates for pharmacy manager positions require candidates to possess bachelor's degrees in pharmacy and State licensure. For example, Staff One seeks a candidate with a Nevada license and a bachelor's degree in pharmacy. Another example is medicalWorkers.com; it seeks candidates for the position of hospital pharmacy manager, and requires a bachelor's degree in pharmacy and an Ohio license. Still another example is Staff One's advertisement for candidates for the position of outpatient pharmacy manager: it requires a bachelor's degree in pharmacy from an accredited school and a registered California pharmacist license. Because the advertisements plainly require proper State licensure, the duties of the Staff One and medicalWorkers.com positions differ from the beneficiary's duties because the petitioner does not require a State license.

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to demonstrate that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, show that its particular position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* reports that the beneficiary's duties parallel those of pharmacy technician and aides; consequently, employers would not require candidates to possess a bachelor's degree in pharmacy to perform the duties of the proffered position. As previously discussed, the advertisements are insufficient to establish the second criterion.

The petitioner has not submitted evidence to establish the third criterion: that it normally requires a degree or its equivalent for the position. Nor has the petitioner submitted evidence that would show the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Again, the *Handbook* reveals that the duties of pharmacy technicians and aides are similar to the beneficiary's duties; consequently, the petitioner fails to establish the fourth criterion because a baccalaureate or higher degree is not required for the offered position.

In conclusion, the petitioner fails to establish that the proffered position qualifies as a specialty occupation.

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 not sustained that burden.

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