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

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS. 3/F
Washington, D.C. 20536

JUL 11 2003

File: EAC 01 063 51676

Office: California Service Center

Date:

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:

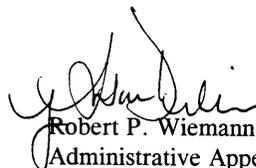
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which 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 approved by the Director, Vermont Service Center. Based upon information obtained from the beneficiary during the visa issuance process in Cairo, Egypt, the director determined the beneficiary was not eligible for H-1B classification. The director, therefore, properly served the petitioner with notice of his intent to revoke the approved petition, and ultimately revoked the petitioner's approval on April 16, 2002. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a New Jersey corporation operating a pharmaceutical business. It has 25 employees and a gross annual income of approximately \$6,000,000. The petitioner seeks to employ the beneficiary as a part-time assistant financial accountant for a period of three years. The director initially determined that the beneficiary qualified for employment in the specialty occupation designated by the initiating petition. That determination was subsequently revoked by the director on the basis that the beneficiary was not qualified to perform the duties associated with that position. Specifically, the director found that the beneficiary was not qualified because he was unable to communicate in English. That determination was made after receiving a report from the Consular section of the U.S. Embassy in Egypt, and after giving due consideration to the petitioner's response to the Bureau's Notice of Intent to Revoke.

On appeal, counsel submits a brief. Counsel states in part that the director erred in revoking the nonimmigrant visa petition, and that the revocation was based on qualification restrictions imposed by the director that are not permitted by regulation.

Section 214(i)(1) of the Immigration and Nationality Act (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:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

The duties detailed by the petitioner in its nonimmigrant visa petition qualify the proffered position as a specialty occupation as initially determined by the Bureau. That issue is not in dispute, as it had no bearing on the director's decision to revoke. The sole issue to be considered on appeal is whether the applicant is qualified to perform the services of the specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner has established that the beneficiary is qualified to perform the duties associated with the offered position in that the beneficiary holds a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. The duties associated with this particular position do not require a proficiency

in the English language. Indeed, the petitioner clearly indicated that the beneficiary would work with individuals fluent in both Arabic and English. There is no requirement in the regulations that an individual be proficient in the English language to qualify to perform services in a specialty occupation. The Bureau may not impose qualification restrictions on the petitioner outside the scope of those allowed by applicable regulation.

The burden of proof in these proceedings rests solely with the petitioner, and the petitioner has sustained that burden. Section 291 of the Act, 8 U.S.C. § 1361. The appeal shall accordingly be sustained, and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.