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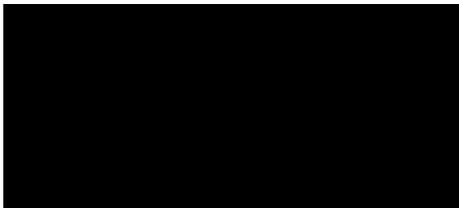
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FILE: EAC 02 251 50405 Office: VERMONT SERVICE CENTER Date: DEC 27 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and 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 pharmacy that seeks to employ the beneficiary as a pharmacy assistant. The petitioner, therefore, endeavors 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a pharmacy assistant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail receiving and inspecting merchandise from suppliers; maintaining pharmaceutical files and records; compiling and preparing pharmacy reports; overseeing the processing of medical records in accordance with regulatory requirements and with the healthcare system; reviewing patients' drug histories to ensure that prescriptions are accurately and safely dispensed; and handling quality assurance, security, and the disposal of hazardous waste. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in pharmaceutical science or a related field.

The director determined that the proffered position was not a specialty occupation. The director found that the four letters from pharmacies did not establish that the proffered position was a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that a job as a pharmacy assistant requires informal on-the-job training or a high school diploma.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel contends that the beneficiary's duties are complex and specialized, requiring theoretical knowledge of complex areas of pharmacology, physiology, medical terminology, state pharmacy laws and ethics, and pharmacy practice to ensure that the petitioner provides safe and beneficial treatment to its customers. Counsel states that the beneficiary will not mix or dispense drugs. According to counsel, the beneficiary must satisfy state regulations governing the operation of licensed pharmacists and the security and the sale of authorized, legal medications. Counsel submits evidence about counterfeit or contaminated prescription drugs. Counsel states that more employers are hiring assistant pharmacists with a bachelor's degree in pharmaceutical sciences, medicine, or a related field, and counsel submits evidence about bachelor's degree programs in the United States.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, 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 as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A review of the *Handbook* discloses that the duties of the proffered position are performed by a pharmacy aide. The *Handbook* states that aides help licensed pharmacists with administrative duties in running a pharmacy. They refer any questions regarding prescriptions, drug information, or health matters to a pharmacist; establish and maintain patient profiles; prepare insurance claim forms and correspond with third-party insurance providers; and stock and take inventory of prescription and over-the-counter medications. The *Handbook* reports that an aide's accurate recordkeeping is necessary to help avert a potentially dangerous drug interaction. This corresponds to the beneficiary's duty to "review patient's [sic] drug histories to ensure accuracy and safety of dispensed drugs." Because the *Handbook* reveals that a pharmacy aide does not require a bachelor's degree, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, pharmacy assistant.

Counsel's statement that more employers are hiring assistant pharmacists with a bachelor's degree in pharmaceutical sciences, medicine, or a related field, and submission of evidence about bachelor's degree programs in the United States is not persuasive in establishing that the proffered position qualifies as a specialty occupation. In the first place, counsel provides no evidence to support her statement about the hiring practices of employers. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Second, the mere existence of a college degree program in pharmaceutical science is irrelevant in determining whether a baccalaureate degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the proffered position.

No evidence in the record establishes the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reports that the duties of the proffered position are performed by a pharmacy aide, a job that does not require a bachelor's degree.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The submitted evidence of articles about counterfeit drugs and the college program in pharmaceutical science fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The

submitted articles about counterfeit drugs are not persuasive in establishing that the beneficiary's duties are complex and specialized. The articles seem to imply that preventing counterfeit drugs from reaching the marketplace is within the hands of manufactures and regulatory agencies. For example, one article indicated that the U.S. Food and Drug Administration (FDA) is considering making manufacturers ship pills in smaller quantities, and having drug packaging bear anti-counterfeiting technologies such as hidden transmitters that pharmacists can scan to be sure they did not buy a fake drug. Another article stated that the FDA needs tougher penalties, and the California Board of Pharmacy stated that it is re-evaluating how it licenses and tracks drug wholesalers. In yet another article, Elizabeth Durant of the Bureau of Customs and Border Protection stated that scientists and inspectors will target, examine, and test packages. With the bachelor's degree program in pharmaceutical science, the mere existence of this degree is irrelevant in determining whether the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Consequently, the evidentiary record fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Moreover, as already discussed, the *Handbook* plainly shows that the duties of the proffered position are performed by a pharmacy aide, an occupation that does not require a bachelor's degree.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.