

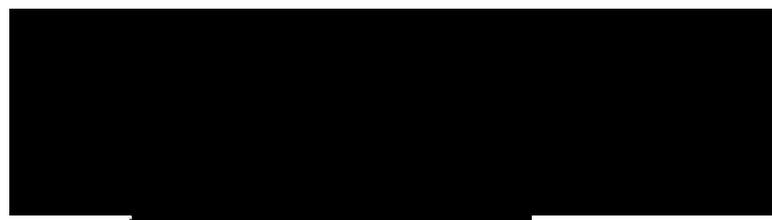
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U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. A3042
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U.S. Citizenship
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FILE [redacted] Office: TEXAS SERVICE CENTER Date: DEC 01 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a pharmacy that seeks to employ the beneficiary as a pharmacist. The petitioner 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 petitioner did not respond to her October 19, 2004 request for additional evidence. On appeal, counsel submits a letter and supporting evidence.

Counsel provides evidence from the United States Postal Service, which indicates that the petitioner's response to the director's request for evidence was delivered to the Texas Service Center on January 19, 2005. Counsel also resubmitted the petitioner's response to the director's request for evidence. The petitioner has overcome the director's determination that the petition was abandoned, and the petition will be remanded to be adjudicated on its merits.

The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proffered position is a specialty occupation and whether the beneficiary is qualified to perform the duties of a specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's January 27, 2005 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.