



U.S. Citizenship
and Immigration
Services



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FILE: EAC 04 033 54160 Office: VERMONT SERVICE CENTER

Date: 07 14 2009

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, 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 in the State of New York. In order 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 on the basis that the petitioner had failed to provide evidence that the beneficiary was authorized to practice as a pharmacist in the State of New York. Prior to her decision to deny the petition, the director had issued a request for evidence (RFE) that included this request:

Please submit a copy of the beneficiary's license to practice the occupation of pharmacist in the State of New York. If law or regulations prohibit making a copy, the original must be submitted. You must submit either evidence of a license, a letter from the licensing authority stating that licensure will be granted upon arrival, or an original letter from the appropriate licensing authority stating that licensure is not required.

The pertinent part of the February 16, 2004 letter submitted in response to the RFE states that the beneficiary is not licensed in the State of New York, and that "he is not required to have a license to practice in the pharmaceutical field because he is requesting a visa under level one pharmacist." The director's decision noted that the petitioner failed to provide the evidence regarding licensure that was requested in the RFE, and the decision correctly discounted the assertion that licensure is not required. As correctly stated by the director, "Assertions alone are not sufficient evidence."

Section 3 of the Form I-290B contains the only statement presented on appeal. There counsel states:

Immigration Consultation Services, which prepared the submitted I-129 Petition for a Nonimmigrant Worker for [the] petitioner, on [the] beneficiary's behalf, states it received information from credible sources that [the] beneficiary did not need a license to work in [the] described job title. Immigration Consultation Services relied on this information in submitting the I-129 petition and response to the request for additional information. The submitted information would suffice to have [the] beneficiary's nonimmigrant classification approved.

Section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), states that an alien applying for classification as an H-1B nonimmigrant worker must possess "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation." The regulations on the licensure requirements for H-1B and other H nonimmigrant classifications are at 8 C.F.R. §§ 214.2(h)(v)(A) to (E).

Pursuant to the regulation at 8 C.F.R. § 214.2(h)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H

classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Pursuant to 8 C.F.R. § 214.2(h)(v)(B), if a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

Where licensure is required in any occupation, 8 C.F.R. § 214.2(h)(v)(E) specifies that the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. This regulation also provides that an alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year, unless he or she has (1) obtained a permanent license in the state of intended employment, or (2) continues to hold a temporary license valid in the same state for the period of the requested extension.

Section 6801 of Article 137 (Pharmacy) of Title VIII (The Professions) of the New York State Consolidated Laws defines the practice of pharmacy as “the preparing, compounding, preserving, or the dispensing of drugs, medicines, and therapeutic devices on the basis of prescriptions or other legal authority.” Section 6803 of that same Article states: “Only a person licensed or otherwise authorized under this article shall practice pharmacy or use the title ‘pharmacist’ or any derivative.” The Internet site of the Office of Professions of the New York State Department of Education pertinent to the practice of pharmacy¹ includes this information about licensure requirements:

General Requirements

Any use of the title "pharmacist" within New York State requires licensure. To be licensed as a pharmacist in New York State you must:

- be of good moral character;
- be at least 21 years of age;
- meet education, examination, and experience requirements; and
- be a United States citizen or alien lawfully admitted for permanent residence in the United States (Alien Registration Card /USCIS I-551 Status - "Green Card").

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¹ The section of the Office of Professions Internet site that specifically addresses pharmacist licensure is www.op.nysed.gov/pharmlic.htm.

Three Year Limited License

Applicants who have met all other requirements for licensure as a pharmacist, but have not achieved United States citizenship or permanent resident alien status, may be eligible for a one-time, three-year limited license. An extension of the three-year limited license of not more than one year may be granted. The authority of the Board of Regents to grant three-year limited licenses (or extensions of those licenses) expires September 30, 2006.

As indicated in the following excerpt from the letter of response to the RFE, the beneficiary would be practicing as a pharmacist as that profession is defined by the State of New York:

As a pharmacist, [the beneficiary] will perform the following duties: Reviewing prescriptions issued by physicians to guarantee accuracy weighing, measuring and mixing ingredients. Compounding and dispensing prescribed pharmaceuticals. Consulting with pharmacy customers, providing them with information of drug interactions, side effects, dosage and storage of pharmaceuticals. He will enter the patient's data[,] prescribed medication and cost. He will also assay medications to determine identity and strength. This will be a full time employment for [the beneficiary].

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 failed to meet that burden which, in the context of this particular proceeding, would require the petitioner to establish that the beneficiary is authorized to practice as a pharmacist in the State of New York without a license. Counsel and the petitioner provide no evidence to support the assertions that licensure is not required. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA).

As the petitioner has not sustained the burden of proof specified at section 291 of the Act, 8 U.S.C. § 1361, the appeal will be dismissed.

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