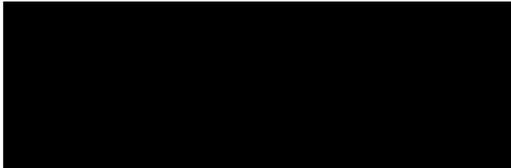


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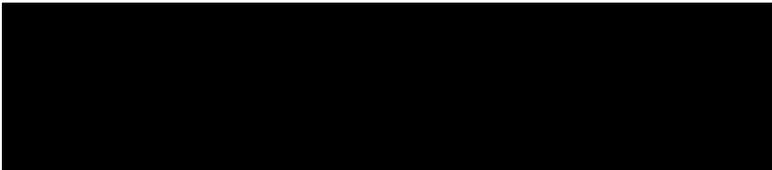
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FILE: EAC 06 154 53446 Office: VERMONT SERVICE CENTER Date: SEP 18 2007

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, Chief
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 appeal will be sustained. The petition will be approved.

The petitioner is a food and drug retailer with reported annual revenues exceeding \$35 billion, and in excess of 230,000 employees.¹ It seeks to employ the beneficiary as a graduate pharmacist intern and endeavors to classify him 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

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

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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 The petitioner reported annual revenues of \$35 billion dollars, and in excess of 230,000 employees on the Form I-129. The record does not contain corroborating financial or employment documentation sustaining that assertion.

- (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 are 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) the Form I-129 and supporting documentation; (2) the notice of intent to deny (NOID); (3) the petitioner's response to the NOID; (4) the director's denial letter; and (5) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a graduate pharmacist intern. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's NOID. According to this evidence the beneficiary would:

- Maintain an atmosphere of enthusiastic customer awareness with an emphasis on fast, friendly, courteous customer service;
- Assist with implementation of the petitioner's pharmacy department sales and promotional programs;
- Engage in suggestive selling and other sales techniques;
- Fill and refill prescriptions under the direct supervision of a registered pharmacist;
- Handle all aspects of third party prescriptions which include: updating profiles, filling prescriptions and maintaining signature logs, correcting and rebilling rejects, and maintaining all reports sent out by third party receivables;
- Follow proper administrative procedures and complete all required reports;
- Maintain all books required by state and federal guidelines and keep reference books up to date;

- Operate the pharmacy computer system and assist when necessary with emergency procedures related to equipment and computer software malfunctions;
- Order, receive, and price products;
- Assist with inventories;
- Check for out-dated products;
- Process returns;
- Assist with posting the proper signage throughout the department;
- Maintain the high appearance, service, product quality, sanitation, and security standards of the pharmacy department;
- Be accountable for proper cash handling procedures and proper accounting of sales;
- Perform all job duties with honesty and integrity; and
- Perform other necessary and required job responsibilities.

The petitioner requires a minimum of a B.S. or PharmD degree from an accredited school of pharmacy for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are those normally performed by pharmacists, except that in this situation, the beneficiary has not yet obtained a pharmacist license and will be working under the direct supervision of a licensed pharmacist. The petitioner has met all State of Washington requirements for obtaining a pharmacy intern credential, with the exception of obtaining a social security number.

The petitioner has established that the proffered qualifies as a specialty occupation because it meets the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the employer normally requires a degree or its equivalent for the position. The petitioner reports that its annual revenues exceed \$35 billion dollars, that it employs in excess of 230,000 employees and operates over 2,500 stores in 37 states. Within the petitioner's organization, a graduate pharmacy intern may only be filled by a person who has obtained at least a bachelor's degree in pharmacy, has obtained the proper intern license (when required), and is awaiting full licensure from a State Pharmacy Board. Individuals who have completed their bachelor's programs in foreign schools may qualify for the position if they have obtained the Foreign Pharmacy Graduate Examination Committee (FPGEC) Certification. The graduate pharmacy intern must work under direct supervision of a registered pharmacist, but otherwise may perform the same job duties. The petitioner reports that all of its graduate pharmacy interns possess at least a bachelor's degree in pharmacy (or its foreign equivalent), and no individual will be hired as a graduate pharmacy intern unless they have completed at least a bachelor's degree program. The petitioner's web site confirms this assertion noting that pharmacists and graduate interns are required to hold a bachelor of science or PharmD degree for

entry into either of those positions.² The petitioner regularly attends university recruitment fairs to recruit pharmacy school graduates for pharmacist and graduate pharmacist intern positions. Further, the duties of the offered position are essentially those of a pharmacist, the performance of which requires the theoretical and practical application of a body of highly specialized knowledge.

The director noted in his decision that the State of Washington makes no distinction between the duties to be performed by an undergraduate student of pharmacy, who has yet to earn a degree, and the duties to be performed by a graduate pharmacist intern. The fact that the State of Washington registers pharmacy interns who have not yet obtained their degrees, does not determine whether or not the duties of the present position qualify as a specialty occupation. In this instance, as previously stated, the duties are essentially those of a pharmacist and qualify as a specialty occupation.

The final issue to be considered is whether the beneficiary is qualified to perform the duties of the proffered position. A foreign credentials evaluation service has determined that the beneficiary's foreign education is equivalent to bachelor's degree in pharmaceutical sciences awarded by an accredited college or university in the United States. Further, as noted by the director, the beneficiary has received FPGEC certification, and meets the educational and examination requirements necessary to obtain a pharmacy intern credential in the State of Washington. Upon receipt of a social security number, the beneficiary will be qualified to perform the duties of the offered position. Provisional qualification shall be granted to the beneficiary for a period of one year in order to obtain a social security number.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved for one year.

² The petitioner also employs pharmacy student interns who are currently enrolled in a professional pharmacy program, and who have not yet obtained a pharmacy degree.