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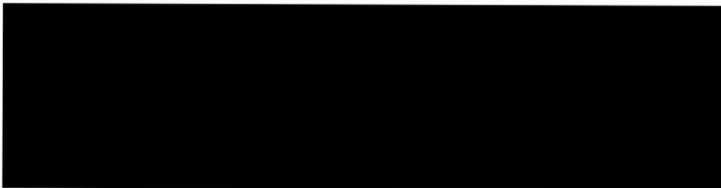
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FILE: EAC 06 207 50722 Office: VERMONT SERVICE CENTER Date: **APR 25 2008**

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
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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a retail pharmacy chain with reported annual revenues exceeding \$37 billion, and in excess of 148,000 employees.¹ It seeks to employ the beneficiary as a graduate pharmacy intern and endeavors to classify her 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 beneficiary was not qualified to perform the duties of the proffered position as of the Form I-129 filing date. Specifically, the director noted that the beneficiary's pharmacy intern license would expire on August 31, 2006, and that the start date for intended employment noted on the Form I-129 was December 1, 2006. In response to the director's request for evidence concerning the licensing issue, the petitioner states that the beneficiary was issued a pharmacist license on August 11, 2006. In denying the petition, the director stated that the petitioner was seeking employment of the beneficiary as a graduate pharmacy intern, not a pharmacist, and that the position of pharmacist was not supported by the Labor Condition Application (LCA) or the duties of the position detailed in the record. On appeal, counsel submits a brief and additional information stating that the proffered position is a specialty occupation and that the beneficiary was qualified to perform the duties of the position when the Form I-129 was filed.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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

- (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;

¹ The petitioner reported annual revenues exceeding \$37 billion dollars, and in excess of 148,000 employees on the Form I-129. The record does not contain corroborating financial or employment documentation sustaining that assertion.

- (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.

As noted above, the director denied the petition stating that the beneficiary was not qualified to perform the duties of the proffered position as of the Form I-129 filing date. The petitioner sought to hire the beneficiary as a graduate pharmacy intern, a position requiring the beneficiary to perform pharmacy related duties while under the direct supervision of a licensed pharmacist, as permitted by applicable law in the State of Texas. The beneficiary received her Doctor of Pharmacy degree from the University of Houston, on May 12, 2006 (the Form I-129 was filed July 5, 2006). Prior to the issuance of her pharmacist license, the beneficiary was a registered pharmacy intern with the Texas State Board of Pharmacy while she completed 1,670 hours of board approved pharmacy internship hours. The beneficiary's intern registration was current when the Form I-129 was filed. Subsequent to the filing of the Form I-129, and prior to its adjudication by the Vermont Service Center, the beneficiary completed her pharmacy internship, having passed required licensing examinations, and was issued her pharmacist license on August 11, 2006. Pharmacy internships in Texas are established to allow candidates for pharmacist licensure to obtain experience and training necessary to perform the work of a licensed pharmacist. Internship licensure in Texas is not required for individuals who have received a Texas pharmacist license. Thus, the pharmacist license received by the petitioner prior to the start of her intended employment on December 1, 2006, fully qualified her to perform the duties of the offered position. The director's decision to the contrary is accordingly, withdrawn.

The director did not determine whether the proffered position qualified as a specialty occupation, denying the petition on the above stated grounds. As such, this matter must be remanded to the director to determine whether the proffered position qualifies as a specialty occupation. It should be noted that the Texas Administrative Code (Title 22, Part 15, § 283.4) sets forth internship requirements. The duties of a pharmacist intern are set forth in § 283.5 of the code. As provided by regulation in Texas, a pharmacist intern may perform the duties of a pharmacist provided the intern is supervised by individuals (pharmacists) approved by the Texas Board of Pharmacy. The regulations do not require pharmacist interns to be graduates of pharmacy school, and internships are routinely approved for pharmacy school students pursuing their degrees. The record does not establish that Texas law requires a degree for certification as a pharmacy intern. Nor does the record establish that the beneficiary will be performing duties that non-degreed interns are prohibited from performing under Texas law. The director shall consider all evidence of record in determining whether the proffered position qualifies as a specialty occupation, and may request such additional evidence as he deems necessary in rendering his opinion.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for entry of a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner is to be certified to the AAO for review.