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U.S. Department of Homeland Security
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U.S. Citizenship
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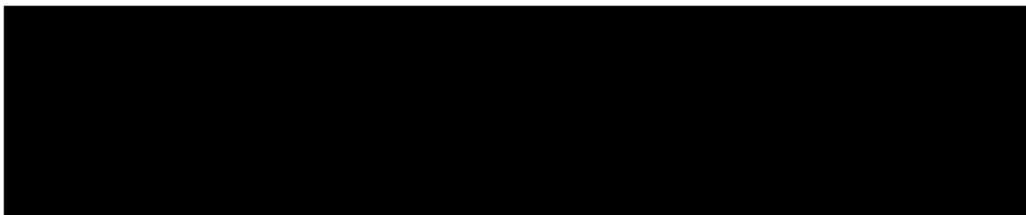
FILE: EAC 06 207 52078 Office: VERMONT SERVICE CENTER Date: **FEB 29 2008**

IN RE: Petitioner:
Beneficiary:



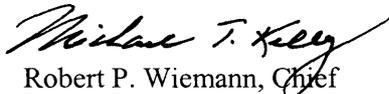
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

for 
Robert P. Wiemann, Chief
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 part-time graduate pharmacy intern. 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 on the basis that the record failed to establish that, at the time of the filing of the petition, the beneficiary was qualified to perform the duties of the specialty occupation.

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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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, an 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;
- (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.

Title 8 C.F.R. § 103.2(b)(12) requires that evidence must establish eligibility as of the time of filing.

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

director's denial letter; and (5) the 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 part-time graduate pharmacy intern. The petitioner indicated that the beneficiary is a qualified candidate for the job because she possesses a foreign bachelor's degree in pharmacy.

The director found that the beneficiary was not qualified for the proffered position because the petitioner had not submitted evidence that the beneficiary had been approved for registration as a pharmacy technician, pursuant to the regulations of the Massachusetts State Board of Pharmacy. The director concluded that the petitioner had not established that the beneficiary is immediately eligible to practice her profession in the State of Massachusetts, in accordance with 8 C.F.R. 103.2(b)(12).

On appeal, counsel states, in part, that as the beneficiary is located outside the United States, she was initially instructed by the petitioner to wait and apply for the intern permit upon arrival to the United States in H-1B status. Counsel states that the memorandum from Thomas E. Cook, Acting Assistant Commissioner, INS Office of Adjudications, *Social Security Cards and the Adjudication of H-1B Petitions*, HQ 70/6.2.8 (November 20, 2001), which provides that CIS will accommodate aliens whose only obstacle to obtaining licensure is due to a lack of a social security number because the alien is not physically present in the United States, applies here. Counsel also states that the beneficiary now possesses a valid Pharmacy Intern Registration permit issued by the Massachusetts Board of Pharmacy.

Upon review of the record, the petitioner has failed to establish that as of the filing date of the petition, the beneficiary was qualified to perform the duties of a part-time graduate pharmacy intern, which requires a valid Pharmacy Intern Registration permit issued by the Massachusetts Board of Pharmacy.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- A Pharmacy Intern Registration Card issued to the beneficiary on January 17, 2007, by the Professional Credential Services, Inc., on behalf of the Massachusetts Board of Registration in Pharmacy; and
- A Bachelor of Science in Pharmacy degree from the Lebanese American University conferred upon the beneficiary on September 30, 2005.

Pursuant to the State of Massachusetts Rules and Regulations at 247 C.M.R. § 8.01: Pharmacy Interns:

(2) The pharmacy internship shall be performed under the direct supervision of a registered pharmacist preceptor;

9) Massachusetts approved colleges/schools of pharmacy shall submit to the Board a written description of each demonstration project or clinical pharmacy program for which pharmacy internship credit is desired. The Board shall review this information and determine whether or not student participation in such project(s) or program(s) may be credited to the internship requirement.

In the above memorandum entitled *Social Security Cards and the Adjudication of H-1B Petitions*, Citizenship and Immigration Services (CIS) states, in part, as follows:

An H-1B petition filed on behalf of an alien beneficiary who does not have a valid state license shall be approved for a period of 1-year provided that the only obstacle to obtaining the state licensure is the fact that the alien cannot obtain a social security card from the SSA. Petitions filed for these aliens must contain evidence from the state licensing board clearly stating that the only obstacle to the issuance of state licensure is the lack of a social security card. In addition, the petitioner must establish that all other regulatory and statutory requirements for the occupation have been met.

The AAO notes that the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2006-07 edition, does not specifically address graduate pharmacist intern positions. The beneficiary, however, will compound and dispense medications issued by physicians, dentists, or other authorized medical practitioners under the direct supervision of a licensed and registered pharmacist, as permitted by the Massachusetts Board of Pharmacy. As discussed above, in the State of Massachusetts, the Massachusetts Board of Pharmacy must review the clinical pharmacy program for which pharmacy internship credit is desired and determine whether or not student participation in such a program may be credited to the internship requirement. Although the beneficiary holds a Pharmacy Intern Registration Card issued by the Professional Credential Services, Inc., on behalf of the Massachusetts Board of Registration in Pharmacy, that registration was issued after the petition's July 3, 2006 filing date. The petitioner, however, must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The AAO notes counsel's statement on appeal that the memorandum from Thomas E. Cook, Acting Assistant Commissioner, INS Office of Adjudications, *Social Security Cards and the Adjudication of H-1B Petitions*, HQ 70/6.2.8 (November 20, 2001), is applicable. In accordance with this memorandum, however, the petitioner was required to submit, at the time the petition was filed, evidence from the Massachusetts Board of Registration in Pharmacy clearly stating that the only obstacle to the issuance of state licensure was the lack of a social security card. As the record does not contain this evidence, the petition may not be approved.

As related in the discussion above, the petitioner has failed to establish that as of the petition's July 3, 2006 filing date, the beneficiary was qualified to perform the duties of the proffered position. 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.