



U.S. Citizenship
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Services

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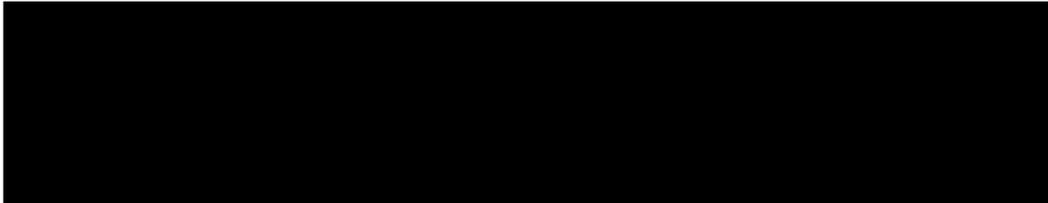


FILE: EAC 06 204 52940 Office: VERMONT SERVICE CENTER Date: **FEB 29 2008**

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.

1/r *Michael T. Kelly*
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, determining 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 he 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 registered for employment as a pharmacy technician, pursuant to the regulations of the Virginia Board of Pharmacy at 18 VAC 110-20-40. The director concluded that the petitioner had not established that the beneficiary is immediately eligible to practice his profession in the Commonwealth of Virginia, 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, he 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 Commonwealth of Virginia's Department of Health Professions 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 Commonwealth of Virginia's Department of Health Professions Board of Pharmacy.

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

- A Pharmacy Intern Registration issued to the beneficiary by the Board of Pharmacy of the Commonwealth of Virginia's Department of Health Professions, with an expiration date of February 20, 2007; and
- A Bachelor of Science in Pharmacy degree from the Lebanese American University conferred upon the beneficiary on June 30, 2005.

Pursuant to Chapter 20 of the Commonwealth of Virginia's Regulations Governing the Practice of Pharmacy, 18 VAC 110-20-40. Procedure for gaining practical experience:

- A. Each pharmacy student or *graduate of an approved school* who desires to gain practical experience in a pharmacy within the Commonwealth *shall register* with the board on a

form provided by the board *prior to becoming engaged as a pharmacy intern...*
(Emphasis added.); and

- B. The applicant shall be supervised by a pharmacist who holds an unrestricted license and assumes full responsibility for the training, supervision and conduct of the intern....

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 Commonwealth of Virginia's Regulations Governing the Practice of Pharmacy. As discussed above, in the Commonwealth of Virginia, the foreign graduate pharmacist intern must register with the board prior to becoming engaged as a pharmacy intern. Although the beneficiary holds a Pharmacy Intern Registration issued by the Board of Pharmacy of the Commonwealth of Virginia's Department of Health Professions, that registration was applied for and issued after the petition's June 30, 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, at the time of the filing of the petition, the petitioner was required to submit evidence from the Board of Pharmacy of the Commonwealth of Virginia's Department of Health Professions clearly stating that the only obstacle to the issuance of state licensure is 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 June 30, 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.