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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FEB 11 2004

FILE: WAC 02 192 52877 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 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 dismissed. The petition will be denied.

The petitioner is a pharmacy staffing/training agency that seeks to employ the beneficiary as a community pharmacy resident. 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 because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, the petitioner submits a letter from the California State Board of Pharmacy.

Section 214(i)(2) of the Immigration and Nationality Act (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.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) 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 community pharmacy resident. The petitioner's director indicated in his August 7, 2002 letter that a pharmacy resident is not required to be licensed in order to perform work in a pharmacy and receive pharmacy training under the supervision of a pharmacist. He further indicated that a passing score on the Foreign Pharmacy Graduate Equivalency Examination Score

Report, administered by the National Association of Boards of Pharmacy (NABP), is nationally recognized as an indicator of equivalency to pharmacy education in the United States.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary does not have a license to practice as a pharmacist in the State of intended employment, and the record does not contain evidence of the beneficiary's academic qualifications, such as diplomas, transcripts, and a credential evaluation of the foreign degree. On appeal, the petitioner submits a letter addressed to the beneficiary, dated October 8, 2002, from the Staff Services Manager of the California State Board of Pharmacy, who states, in part, as follows:

> The California State [Board] of Pharmacy has received and reviewed your application for a California pharmacist intern card. The information you provided on your application indicated that you have met all regulatory and statutory requirements for the issuance of an intern card except for the fact that you did not include your social security number on your application.
>
> As explained in the application form, providing your United States Social Security Account Number is mandatory. Thus, the absence of your social security number is now the only obstacle to you obtaining a pharmacist intern card. . . .

In a memorandum entitled "Social Security Cards and the Adjudication of H-1B Petitions," dated November 20, 2001, 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.

In addition to the above referenced letter from the California State Board of Pharmacy, the record contains a Score Report from the National Association of Boards of Pharmacy reflecting that the beneficiary passed the Foreign Pharmacy Graduate Equivalency Examination. The record, however, does not contain the evidence requested by the director of the beneficiary's educational qualifications, such as diplomas, transcripts, and a credential evaluation of the foreign degree. Accordingly, it is concluded that the petitioner has not shown that the beneficiary qualifies to perform the duties of the proffered position. For this reason, the petition may not be approved.

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.