

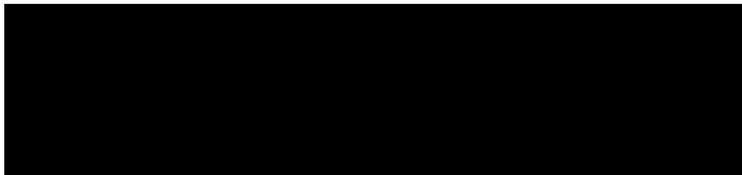
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U.S. Citizenship
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FILE: EAC 06 142 53191 Office: VERMONT SERVICE CENTER Date: DEC 28 2007

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, 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 sustained. The petition will be approved.

The petitioner is a national food and drug retailer that seeks to employ the beneficiary as a graduate pharmacist 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 because the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's Notice of Intent to Deny (NOID); (3) former counsel's response to the director's 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 reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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) 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 is 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) consistently interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as a graduate pharmacist intern. Evidence of the beneficiary's duties includes: the petitioner's April 12, 2006 letter in support of the petition and former counsel's May 24, 2006 response to the director's NOID. As stated by the petitioner, the proposed duties are as follows:

The basic purpose and function of a Graduate Pharmacist Intern is **to dispense medication, counsel and consult with patients, ensure customer service, maintain prescription information, and perform general duties of a pharmacist, as allowed by law, under the direct supervision of a registered pharmacist.** (Emphasis in the original.)

More specifically, a Graduate Pharmacist Intern is required to expend 90% of his or her time on the job as follows:

- Analyze and understand the chemical composition of prescribed medications and their effect on the human body and counsel/consult with patients; monitor drug therapy; review prescriptions to determine accuracy and to determine formulas and ingredients needed; compound pharmaceutical preparations using standard formulas and processes such as weighing, measuring, and mixing ingredients; consult with doctors for potential drug interactions and dosage justification and provide consultation on all new prescriptions (80%);

- Prepare and dispense medication, fill and refill bottles with prescribed tablets and capsules, maintain prescription information (5%); and
- Receive and store incoming supplies, count and enter data in the computer to maintain inventory records and maintain high standards in appearance, service, product quality, sanitation and security (5%).

All under the direct supervision of a registered pharmacist, as permitted by the Wisconsin State Board of Pharmacy.

The Graduate Pharmacist Intern is also required to 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 (10%).

The director found that the proposed graduate pharmacist intern position does not qualify as a specialty occupation, as the Wisconsin Administrative Code makes no distinction between the duties that may be performed by an undergraduate student of pharmacy and by a graduate intern pharmacist. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered graduate pharmacist intern position qualifies as a specialty occupation, as the label of "intern" does not negate the position's specialized nature or professional level that requires at least a bachelor's degree. Counsel also states that to be eligible to complete the state board examinations and obtain professional licensure as a pharmacist in the State of Wisconsin, an individual must have graduated from a school, college, or department of pharmacy approved by Wisconsin's Pharmacy Examining Board and completed an internship program in accordance with rules adopted by this examining board. Counsel states further that to qualify for and obtain state licensure as a pharmacist, a candidate must satisfy the following:

1. Graduate from a school or college of pharmacy approved by the board or have taken and passed the Foreign Pharmacy Graduate Equivalency Examination given by the Foreign Pharmacy Graduate Examination Commission;
2. Complete an internship program or have practical experience acquired in another state which is comparable to that included in the internship and which is approved and verified by the board. . . .; and
3. Pass required examinations, including the North American Pharmacist Licensure Examination (NAPLEX), the Multi-State Pharmacy Jurisprudence Examination (MPJE), and the Patient Consultation [Examination].

Pursuant to the Wisconsin Administrative Code: Pharmacy Examining Board, Chapter Phar 17.02(3), "Foreign graduate internship" means:

[T]he practice of pharmacy by a person who has first filed an application with the board for original licensure under s. Phar 2.02 and has not graduated from a professional bachelor's of science degree in pharmacy or doctor of pharmacy degree granting institution located in this or another state.

Pursuant to Chapter Phar 17.04, Foreign graduate internship:

- (1) Prior to performing duties as an intern or to receiving credit for hours participating in a foreign graduate internship the person must file an application with the board for original licensure under s. Phar 2.02.
- (2) A foreign graduate internship is limited to performing duties constituting the practice of pharmacy under the supervision of a supervising pharmacist. The supervising pharmacist shall keep a written record of the hours and location worked by the intern under his or her supervision, signed by the intern and the supervising pharmacist. The written record shall be produced to the board upon request.
- (3) A person shall not further engage in the practice of pharmacy as a foreign graduate intern in excess of 2000 hours unless that person first submits to the board evidence of having obtained certification by the foreign pharmacy graduate examination committee.
- (4) Upon completing a maximum of 3000 hours of the practice of pharmacy in a foreign graduate internship, the internship is terminated and the person shall not further engage in the practice of pharmacy until obtaining licensure from the board.

...

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. 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. As discussed above, however, the beneficiary will dispense medication, counsel and consult with patients, ensure customer service, maintain prescription information, and perform general duties of a pharmacist, as allowed by law, under the direct supervision of a registered pharmacist, as permitted by the Wisconsin State Board of Pharmacy. A review of the evidence of record finds that in the State of Wisconsin, the foreign graduate pharmacist intern must hold a foreign bachelor's degree in pharmacy and certification by the FPGEC. The beneficiary in this case holds an FPGEC Certificate and a foreign Bachelor of Science in Pharmacy degree, which was evaluated as equivalent to a U.S. degree of Bachelor of Science in Pharmacy awarded by a regionally accredited college or university in the United States. The record also contains a website printout from the Wisconsin Department of Regulation and Licensing reflecting that the beneficiary is approved to start her internship effective April 3,

2006. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations and that the beneficiary is qualified to perform the duties of the specialty occupation.

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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.