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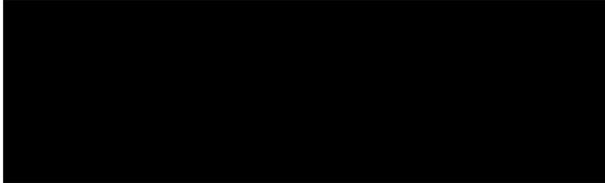
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
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U.S. Citizenship
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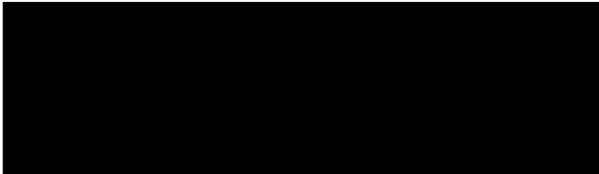


FILE: EAC 06 163 50049 Office: VERMONT SERVICE CENTER Date: **DEC 28 2007**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director 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 on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; (3) the director's request for additional evidence; (4) the petitioner's response to the director's request; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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 qualification for classification as a specialty occupation, the proposed 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) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

The petitioner is a large national food and drug retailer. It claims on the petition that it was established in 1939, has over 230,000 employees, and a gross annual income of \$35 billion. In the director's June 12, 2006 decision, he noted that the proposed position consists of the same duties performed by a pharmacy student intern who is an intern that is currently in school and has not yet obtained a bachelor's degree. In his decision, the director also cited from the California Code of Regulations, Title 16, Division 17, Board of Pharmacy, Article 3 Pharmacists Candidates, § 1727, which states that an intern pharmacist is a person who holds a valid intern card. The regulations further explain that an intern card will be issued to an individual who fulfills one of four requirements. The two requirements discussed in the decision are: (1) an intern card will be issued to an individual who is "currently enrolled in a school of pharmacy recognized by the board;" or, (2) an intern card will be issued to an individual who graduated from a school of pharmacy. The director stated that the California Code of Regulations "makes no distinction between the duties that may be performed by an undergraduate intern pharmacist, who is currently enrolled in a school of pharmacy, and the duties that may be performed by a graduate intern pharmacist."

On appeal, counsel for the petitioner contends that the position of graduate pharmacy intern is not the same position as that of a student pharmacist intern. Counsel states that a graduate student intern must have earned at least a baccalaureate degree in a course of study devoted to the practice of pharmacy in order to receive a license to practice as a graduate student intern. Counsel also states that the industry norm, and the petitioner's specific needs, require that a graduate pharmacist intern must have obtained a bachelor's degree or its equivalent in a specific specialty in order to fill the position.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO notes that the petitioner filed the Labor Condition Application (LCA) requesting a graduate pharmacist intern at the annual salary of \$50,400. The petition and supporting documents seek a graduate pharmacist intern.

As noted by the director, the state of California may issue a pharmacist intern license to either a student of pharmacy or a graduate of a pharmacy school. *See* California Business & Professions Code, Chapter 9, Division 2, Sections 1727, 4208. The pharmacist intern must practice under the supervision of a licensed pharmacist and may perform all the duties of a pharmacist. *See* California Business & Professions Code, Chapter 9, Division 2, Section 1727. The director stated that because there is no legal distinction between the duties that may be performed by both graduates and undergraduates of a pharmacy program, the position cannot be a specialty occupation.

California law also requires a 1500 hour pharmacy practice internship before the graduate pharmacist intern may apply for full licensure. *See* California Business & Professions Code, Chapter 9, Division 2, Sections 4209, 1728. This internship may be completed either before or after graduation from a pharmacy school. Thus, California does not distinguish between the levels of responsibility to be performed by a student or graduate pharmacist interns.

The AAO notes, however, that in order for a foreign graduate to work as a pharmacist intern, the foreign graduate must have completed his/her education at a foreign pharmacy school and have obtained a satisfactory examination score. *See* California and Professions Code, Chapter 9, Division 2, Section 4208. Thus, the minimum requirement for a foreign pharmacist intern in the state of California is a baccalaureate degree in pharmacy. As the petitioner seeks to hire a foreign pharmacist intern in the position, the position qualifies as a specialty occupation under 8 C.F.R. 214.2(h)(4)(iii)(A)(i).

In addition, the petitioner requires its employees who fill the position of graduate student intern to have obtained a bachelor's degree or PharmD degree, as evidenced by its job advertisement for the proffered position. The record reflects that that the beneficiary earned the equivalent of a U.S. Bachelor of Pharmacy degree. In its May 24, 2006, response to the director's request for evidence, the petitioner sought to amend the requested dates of intended employment from three years to one year, until October 1, 2007. Nevertheless, the intern pharmacist registration from the state of California is valid only until June 30, 2007. Thus, the beneficiary is qualified to perform the services of a graduate pharmacist intern until June 30, 2007. Thus, the petition will be approved for one year until June 30, 2007.

The petitioner has established both that the position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of that specialty occupation, until June 30, 2007. Accordingly, the petition will 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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved until June 30, 2007.