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FILE: EAC 04 252 51042 Office: VERMONT SERVICE CENTER Date: **AUG 15 2006**

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a retail pharmacy chain. It seeks to employ the beneficiary as a pharmacist intern and to continue her classification 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 ground that the record failed to establish that the proffered position qualifies as a specialty occupation.

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.

As provided in 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) 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 proffered position.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's decision, and (3) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a chain of retail pharmacies, established in 1962, with 77,000 employees at 3,400 store locations spread across the United States, and gross sales of \$16.6 in fiscal year 2004. The petitioner proposes to employ the beneficiary as a pharmacist intern for three years, at a wage of \$20.00/hour, at its

pharmacy serving the Princeton, New Jersey area. The duties and responsibilities of the proffered position are listed as follows on the company's standard job description form for pharmacists, which the petitioner indicates is also used for pharmacist interns:

- Fill and verify prescriptions for customers.
- Assist customers with medical-related issues and provide healthcare counseling.
- Supervise the work completed by pharmacy technicians and support staff.
- Maintain appropriate security of the pharmacy department.
- Handle customer issues such as customer complaints and questions regarding insurance coverage.
- Interact with physicians and utilize reference materials to gain information on customers and prescriptions and to resolve any issues that arise.
- Assist with maintaining the pharmacy department by keeping it clean and in order.
- Assist with cycle counts, inventory reports, and will-calls to customers.
- Interact with the pharmacy manager to build customer loyalty.
- Complete quality assurance duties applicable to state and federal Board of Pharmacy regulations.
- Comply with all federal and state laws and regulations.

The proffered position requires a baccalaureate or higher degree in pharmacy, the petitioner declares, and the beneficiary is qualified by virtue of her bachelor of pharmaceutical sciences from the University of Mumbai in India, granted in December 1999, her master of science in pharmaceutical sciences from the University of Toledo (Ohio) in December 2001, and her passage of a series of certification examinations. The petitioner points out that the beneficiary initially received H-1B classification – for a three-year period beginning on October 1, 2002 – to work as a formulation scientist with another company, Geneva Pharmaceuticals Technology.

In her decision the director found that the duties of the proffered position are those of a pharmacy technician, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, and cited information in the *Handbook* indicating that a bachelor's degree in a specific field of study is not the normal minimum requirement for entry into such a position. A pharmacy intern is a training position, the director declared, which does not necessarily lead to a position as a licensed pharmacist and therefore does not require a body of highly specialized knowledge and the attainment of a specialty degree. The documentation of record did not establish that a degree requirement is common to the industry in parallel positions among similar organizations, the director stated, or that the duties of the proffered position are so specialized and complex that they can only be performed by an individual with a specialty degree. Nor did the petitioner establish that it normally requires a degree in a specific specialty for the position. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated under 8 C.F.R. § 214.2(h)(4)(iii)(A) and does not meet the statutory definition of a specialty occupation.

On appeal the petitioner characterizes the proffered position of pharmacist intern as a transitional position, in Rite Aid Corporation as well as under New Jersey state law, for individuals with pharmacy degrees to acquire the requisite on-the-job experience, under the supervision of a licensed pharmacist, to become eligible to take the state examination for licensure as a pharmacist. Accordingly, the job duties of a pharmacist intern are nearly identical to those of a licensed pharmacist. The job description submitted with the petition was for a pharmacist, the petitioner explains, because pharmacist interns are simply part of the licensure process and not a job title for which Rite Aid maintains a separate job description. On appeal the petitioner reiterates that the pharmacist intern "will dispense drugs prescribed by physicians and other health practitioners and provide

information to patients about medications and their use. They will advise physicians and other health practitioners on the selection, dosages, interactions, and side effects of medications.” To perform these duties, the petitioner declares, the pharmacist intern “must understand the use, clinical effects, and composition of drugs, including their chemical, biological, and physical properties.” The State of New Jersey does not require a pharmacist intern to be licensed, the petitioner states, but does require a pharmacist intern with a foreign degree to obtain a certificate from the National Association of Boards of Pharmacy (NABP) that his or her degree is equivalent to a pharmacy degree from an accredited U.S. college or university.¹ The petitioner cites several prior decisions by the Department of Labor and the Vermont Service Center which determined that pharmacy interns require a bachelor’s degree in pharmacy and that they qualify as a specialty occupation. In the petitioner’s view, the record shows that the proffered position of pharmacist intern requires at least a baccalaureate degree in pharmacy and therefore qualifies as a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F.Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*’s occupational descriptions as a reference, as well as the petitioner’s past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO does not agree with the director’s finding that the proffered position fits the *Handbook*’s description of a pharmacy technician. That occupation is described in the *Handbook*, 2006-07 edition, at 336:

Pharmacy technicians help licensed pharmacists provide medication and other health care products to patients. Technicians usually perform routine tasks to help prepare prescribed medication for patients, such as counting tablets and labeling bottles. Technicians refer any questions regarding prescriptions, drug information, or health matters to a *pharmacist*.

....

Pharmacy technicians who work in retail or mail-order pharmacies have varying responsibilities, depending on State rules and regulations. Technicians receive written prescriptions or requests for prescription refills from patients. They also may receive prescriptions sent electronically from the doctor’s office. They must verify that the information on the prescription is complete and accurate. To prepare the prescription,

¹ Pharmacist intern is defined in the New Jersey Administrative Code (N.J.A.C.), Title 13, Chapter 39, Subchapter 8.1, in pertinent part as follows:

Pharmacist intern means any person who has graduated from an American Council of Pharmaceutical Education approved school or college of pharmacy, or if a foreign pharmacy graduate, any person who has satisfied the requirements of N.J.A.C. 13.39-3.11 [regarding certification for licensure by the NABP], who is employed in an approved training pharmacy for the purpose of acquiring accredited practical experience and who has first registered for said purposes with the Board.

technicians must retrieve, count, pour, weigh, measure, and sometimes mix the medication. Then, they prepare the prescription labels, select the type of prescription container, and affix the prescription and auxiliary labels to the container. Once the prescription is filled, technicians price and file the prescription, which must be checked by a pharmacist before it is given to the patient. Technicians may establish and maintain patient profiles, prepare insurance claim forms, and stock and take inventory of prescription and over-the-counter medications.

Based on the evidence of record, the AAO agrees with the petitioner that the duties of the proffered position are more specialized and complex than the “routine tasks” (*Handbook*) performed by pharmacy technicians. Pharmacy technicians assist the pharmacist in preparing prescriptions, record-keeping, and inventory control, but they refer questions about prescriptions, drug information, and health matters to a pharmacist. The pharmacist intern at issue in this petition has a broader range of duties and responsibilities that include direct patient contacts such as assisting with medical-related issues, providing healthcare consulting services, interacting with physicians on patient-related issues, and assisting in various managerial and regulatory compliance functions. The duties of the proffered position, though under the supervision of a licensed pharmacist, are essentially the same as those of a pharmacist, as described in the *Handbook, id.*, at 289:

Pharmacists distribute drugs prescribed by physicians and other health practitioners and provide information to patients about medications and their use. They advise physicians and other health practitioners on the selection, dosages, interactions, and side effects of medications. Pharmacists also monitor the health and progress of patients in response to drug therapy to ensure the safe and effective use of medication

Pharmacists in community and retail pharmacies counsel patients and answer questions about prescription drugs, including questions regarding possible side effects or interactions among various drugs. They provide information about over-the-counter drugs and make recommendations after talking with the patient. They also may give advice about the patient’s diet, exercise, or stress management or about durable medical equipment and home health care supplies. In addition, they also may complete third-party insurance forms and other paperwork Some community pharmacists provide specialized services to help patients manage conditions such as diabetes, asthma, smoking cessation, or high blood pressure. Some community pharmacists also are trained to administer vaccinations.

The AAO concludes that pharmacist interns are a subset of the occupation of pharmacist. With respect to the educational requirements of the occupation, the *Handbook* states as follows:

A license to practice pharmacy is required in all States, the District of Columbia, and all U.S. territories. To obtain a license, the prospective pharmacist must graduate from a college of pharmacy that is accredited by the Accreditation Council for Pharmacy Education (ACPE) and pass an examination . . . administered by the [NABP].

Handbook, id., at 290. As previously noted, New Jersey law requires pharmacist interns as well to have a pharmacy degree. Based on the foregoing information, the AAO determines that the proffered position of pharmacist intern qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a bachelor’s degree in pharmacy is the normal minimum requirement for entry into the position.

To be qualified to perform services in a specialty occupation, an alien must have the following credentials under section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2):

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (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 licensure requirement of 8 U.S.C. § 1184(i)(2)(A) is further explained in the regulation at 8 C.F.R. § 214.2(h)(4)(v):

- A. *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien . . . seeking H classification in that occupation must have that license prior to approval of the petition to be found eligible to enter the United States and immediately engage in employment in the occupation.
- B. *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, and the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

- C. *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

New Jersey, the intended state of employment, regulates the licensure of pharmacists in the New Jersey Administrative Code (N.J.A.C.), Title 13, Chapter 39, Subchapter 3. With respect to foreign graduates from primarily non-English speaking countries, like the beneficiary, the code contains the following provision at N.J.A.C. 13:39-3.11:

Any pharmacist applicant with a degree from a country where the primary language is other than English, prior to being granted initial licensure as a professional pharmacist in this State, shall submit to the [State] Board [of Pharmacy] evidence that he or she has been certified within two years of applying for licensure in the State by the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy.

The record includes a copy of the FPGEC Certificate granted to the beneficiary on July 30, 2004, confirming that the beneficiary had passed the Foreign Pharmacy Graduate Equivalency Examination and other required examinations. The record also includes a copy of a letter to the beneficiary from the New Jersey Board of Pharmacy, dated October 6, 2004, acknowledging receipt of the beneficiary's internship form and her preceptor form (identifying the registered pharmacist who would supervise the internship). The letter noted that the beneficiary is "a graduate from a foreign country, so it will be necessary for you to work as an intern for 1,000 hours." The letter advised the beneficiary that after completing the requisite internship hours and sending the record thereof to the Board, "we will forward you an application for the examination for registration [as a licensed pharmacist]."

As indicated in the foregoing documentation, the beneficiary must work in the State of New Jersey as an unlicensed pharmacist intern for 1,000 hours before becoming eligible for licensure as a registered pharmacist. The AAO determines that the beneficiary meets the licensure requirement of 8 U.S.C. § 1184(i)(2)(A) and 8 C.F.R. § 214.2(h)(4)(v)(C) to perform services in the specialty occupation. The AAO also determines that the beneficiary's FPGEC Certificate establishes the U.S. equivalence of her foreign degree in pharmaceutical sciences, thereby qualifying the beneficiary under 8 U.S.C. § 1184(i)(2)(B) and 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) to perform services in the specialty occupation.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

ORDER: The appeal is sustained. The petition is approved.