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U.S. Citizenship
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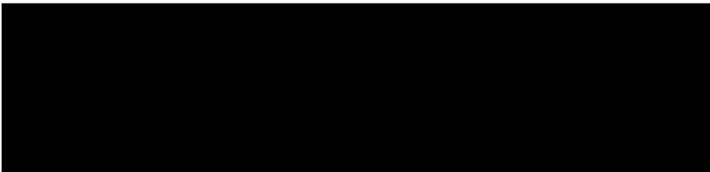
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FILE: EAC 06 209 52528 Office: VERMONT SERVICE CENTER Date: **APR 15 2008**

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.

Michael T. Kelly
Robert P. Wiemann, Chief
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 retail pharmacy chain with reported annual revenues exceeding \$37 billion, and in excess of 148,000 employees.¹ It seeks to employ the beneficiary as a graduate pharmacy intern and endeavors to classify him 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 stating that the beneficiary was not qualified to perform the duties of the proffered position when the Form I-129 was filed (July 10, 2006). The director requested that the petitioner provide evidence that the beneficiary was registered to work as a pharmacy intern in Ohio on July 10, 2006. In response to that request, the petitioner provided a copy of the beneficiary's Ohio pharmacist license issued on August 4, 2006. The director further noted that the petition sought employment of the beneficiary as a graduate pharmacy intern, not a pharmacist, and that the Labor Condition Application (LCA) submitted with the petition does not support a pharmacist position. On appeal, counsel submits a brief and additional information stating that the proffered position is a specialty occupation and that the beneficiary was qualified to perform the duties of the position when the Form I-129 was filed.

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:

- (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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

¹ The petitioner reported annual revenues exceeding \$37 billion dollars, and in excess of 148,000 employees on the Form I-129. The record does not contain corroborating financial or employment documentation sustaining that assertion.

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.

As noted above, the director denied the petition on finding that the beneficiary was not qualified to perform the duties of the proffered position when the Form I-129 was filed. The petitioner sought to hire the beneficiary as a graduate pharmacy intern, a position requiring the beneficiary to perform pharmacist related duties while under the direct supervision of individuals (pharmacists) approved for such supervision by the Ohio Board of Pharmacy. The beneficiary received his Doctor of Pharmacy degree from the University of Houston on May 12, 2006 (the Form I-129 was filed July 10, 2006). Prior to the issuance of his pharmacist license, the beneficiary was a registered pharmacy intern with the Texas State Board of Pharmacy while he completed 1,670 hours of board approved pharmacy internship hours. The record does not establish, however, that the beneficiary was registered to work as a pharmacy intern in Ohio (as required by Ohio law – Chapter 4729-3 of the Ohio Administrative Code, Rule 4729-03-02) when the Form I-129 was filed. As such, the beneficiary lacked the necessary certification (licensure) to work in the offered position and was not qualified to perform the duties of the proffered position. The petitioner 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).

Beyond the decision of the director, the record does not establish that the proffered position is a specialty occupation. The petitioner submitted copies of regulations pertaining to the registration of pharmacy interns in Ohio. Those regulations note that “pharmacy internship” means the supervised practical experience required for pharmacist licensure. The regulations further provide that persons actively working toward the requirements of a pharmacist license who desire to work as a pharmacist intern, may apply for pharmacy intern registration if they have completed at least 60 semester hours or 90 quarter hours of college, and are enrolled in a school of pharmacy. A baccalaureate level education is not required to work as a pharmacist intern in Ohio. The record does not establish that the beneficiary would perform duties that non-degreed pharmacist interns are prohibited to perform in Ohio, or that the present position requires the performance of any such duties. As such, the proffered position does not qualify as a specialty occupation. For this additional 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 failed to sustain that burden.

ORDER: The appeal is dismissed. The petition is denied.