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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: EAC 03 151 53162 Office: VERMONT SERVICE CENTER Date: JAN 04 2005

IN RE: Petitioner: [redacted]
Beneficiary:

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.

Robert P. Wiemann, Director
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 dismissed. The petition will be denied.

The petitioner is a veterinary hospital. It seeks to employ the beneficiary as a veterinary technician, specializing in avian and exotic animals, and to classify her 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 grounds that the evidence of record failed to establish that the proffered position was a specialty occupation, or that the beneficiary was qualified to perform the services of the job, or that a labor condition application was filed with and certified by the Department of Labor.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(l), 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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides 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.

As provided in 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 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: (1) Form I-129; (2) the director's requests for evidence (RFEs); (3) the petitioner's responses thereto; (4) the director's decision; and (5) the appeal (Form I-290B) and supporting letter. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a veterinary hospital in operation since 1981 with a current staff of fifteen employees. It seeks to hire the beneficiary as a veterinary technician specializing in the care and treatment of avian and exotic animals. In a letter dated July 16, 2003, responding to the director's first RFE, the petitioner stated that it was difficult to find an individual with the beneficiary's specific training and experience. According to the petitioner "[the beneficiary's] skills and expertise involve not only restraint and nursing care, but also anesthesia, radiology and client education." As evidence of the beneficiary's qualifications the petitioner submitted a letter from [redacted], from the Bird and [redacted] Hospital in Montreal, Quebec, dated July 1, 2003, "confirm[ing] that [the beneficiary] underwent an intensive training program to become an avian and exotic animal health technician at our clinic." According to [redacted] "[t]o be an avian and exotic animal health technician requires much more knowledge and abilities than to be a dog and cat technician because the person has to know about a large quantity of very different animals and has to adapt to many different techniques." The letter went on to describe various types of birds, mammals, and reptiles the beneficiary handled, the techniques she learned to administer medication, such as injections, intubations, and oral administrations, as well as other medical techniques and the monitoring of anesthesia. The petitioner also submitted a letter from the beneficiary, dated July 22, 2003, stating that she began working at the Bird and Exotic Animal Hospital in Montreal in the fall of 2000, where she took a three-month training program to become an "exotic animal technician." The program included instruction in avian- and reptile-specific techniques of anesthesiology

and tube feeding, as well as other specialized training. In response to the director's second RFE the petitioner submitted another letter, dated November 4, 2003, emphasizing that the beneficiary "possesses a specific set of skills that are not easily found and are usually acquired in an apprenticeship rather than a formal degree program." The petitioner explained that "[t]reating, X-raying, monitoring anesthesia and restraining birds, snakes, turtles, iguanas, hedge-hogs, rabbits and other such critters is not part of the education in any traditional veterinary technician program."

In her decision the director found that the record failed to establish that the veterinary technician position met the statutory definition of a specialty occupation because there was no evidence that the job required the services of an individual with at least a baccalaureate degree in the specific field of study. The director noted the petitioner's statement in the initial filing (on Form I-129W) that the beneficiary had a bachelor's degree in the "social sciences," which would appear to be unrelated to veterinary medicine. The director also found that the record failed to establish the beneficiary's qualification to perform services in a specialty occupation. In the first RFE the petitioner had been requested to submit evidence that the beneficiary met one of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*), (*2*), (*3*), or (*4*), *supra*, that would qualify her to perform services in a specialty occupation. The petitioner responded with the previously discussed letters in July 2003, in particular the letter from the Bird and Exotic Animal Hospital in Montreal, apparently attempting to show that the beneficiary has the "education, specialized training, and/or progressively responsible experience" to meet the fourth criterion. No evidence was submitted of a baccalaureate or higher degree from a U.S. or foreign academic institution, or of a professional license in the State of Massachusetts, that could satisfy one of the other three criteria. The director indicated in her second RFE that the evidence submitted in July 2003 was insufficient to establish that the beneficiary was qualified to perform the services of a specialty occupation. The petitioner was requested to obtain an advisory evaluation of the beneficiary's educational credentials from an individual, organization, or educational institution competent to provide such a service. The petitioner responded with the previously discussed letter (her second) about the beneficiary in November 2003, but did not provide the requested educational credentials evaluation. In her decision, therefore, the director declared that "the petitioner did not provide documentation that the beneficiary possesses a combination of education, specialized training, and/or professional level experience that is equivalent to the training acquired through the attainment of a United States baccalaureate degree in the occupation." In addition, the director noted that the record still did not contain evidence of the beneficiary's bachelor's degree in the social sciences.

In her decision the director also found that the record failed to establish that the requisite labor condition application (LCA), Form ETA-9035, had been filed with and certified by the Department of Labor (DOL), as specified in section 101(a)(15)(H)(i)(B) of the Act. No evidence of any such filing and certification was submitted by the petitioner at the time the instant H-1B petition was filed, or in response to the director's first RFE. Evidence of the labor condition application was specifically requested in the second RFE, to which the petitioner responded with a handwritten notation on the cover sheet that the LCA had been faxed to DOL on November 5, 2003. But no copy thereof was submitted to the Vermont Service Center, nor evidence that the application was certified by DOL.

On appeal the petitioner submitted another letter, dated February 23, 2004, asserting that the beneficiary's qualifications had been "misread." According to the petitioner the beneficiary had "trained not for three months, but for almost two years." The petitioner was clearly referring to the director's reference in the decision to the beneficiary's three-month training program in which she learned technical skills such as

"administering medications and injections, monitoring anesthesia, and completing tube feedings." In her letter of July 1, 2003 the beneficiary specifically stated that she took a three-month training program to become an exotic animal technician shortly after commencing work at the [redacted] in Montreal. The petitioner's assertion that the beneficiary had almost two years of training probably refers to the total time she was employed at the hospital, since the beneficiary states that she began working there in the fall of 2000 and the record indicates that she came to the United States in September 2002. The letter from the [redacted] it should be noted, did not confirm the beneficiary's dates of employment.

The petitioner did not make any further substantive comments about the director's decision in the appeal, and did not submit any additional documentation. Thus, the record still lacks an educational credentials evaluation for the beneficiary, which was requested in the second RFE. Nor is there any evidence of the beneficiary's educational degree – allegedly a bachelor's degree in the social sciences.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered by CIS 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. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). 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, id.*, at 1165-66.

As described in the *Handbook*, 2004-05 edition, at page 336:

> Veterinary technologists and technicians typically conduct clinical work in a private practice under the supervision of a veterinarian – often performing various medical tests along with treating and diagnosing medical conditions and diseases in animals. For example, they may perform laboratory tests such as urinalysis and blood counts, assist with dental prophylaxis, prepare tissue samples, take blood samples, or assist veterinarians in a variety of tests and analyses in which they often utilize various items of medical equipment, such as test tubes and diagnostic equipment . . . . [s]ome veterinary technicians obtain and record patient case histories, expose and develop x-rays, and provide specialized nursing care. Additionally, experienced veterinary technicians may discuss a pet's condition with its owners and train new clinic personnel. Veterinary technologists and technicians assisting small animal practitioners usually care for companion animals, such as cats and dogs, but can perform a variety of duties with mice, rats, sheep, pigs, cattle, monkeys, birds, fish, and frogs.

The *Handbook* also indicates that most entry-level veterinary technicians have a two-year associate degree in veterinary technology. A few colleges, according to the *Handbook*, offer a four-year bachelor's degree in veterinary technology.

Based on the evidence of record, the AAO determines that the veterinary technician position proffered to the beneficiary does not meet any of the regulatory criteria to qualify as a specialty occupation. The petitioner has submitted no evidence, and has not even asserted, that a baccalaureate degree in veterinary technology, or its equivalent, is required for its veterinary technician position. Thus, the position does not meet the first alternative criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

With respect to the second alternative criterion, the petitioner has not submitted any evidence that a bachelor's degree requirement is common to the veterinary industry in parallel positions among similar organizations. Thus, the position does not meet the first prong in 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) to qualify as a specialty occupation. Although the petitioner claims that the proffered position is more complex and demanding than that of a typical veterinary technician who does not handle exotic animals, there is little documentary evidence thereof in the record. The letter from [redacted] of th[redacted] in Montreal provides some evidence of the beneficiary's specialized training in exotic animals, but it does not address the petitioner's specific position. The AAO concludes that the petitioner has not established that the veterinary technician position is so complex or unique that it can only be performed by an individual with a specialty degree, as required to meet the second prong in 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) to qualify as a specialty occupation.

Since the proffered position is newly created, the petitioner does not have a hiring history. Thus, the position cannot meet the third alternative criterion – "the employer normally requires a degree or its equivalent for the position" – to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Nor does the proffered position meet the fourth alternative criterion in 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*) because the petitioner has provided no evidence that the specific duties are so specialized and complex that they required knowledge associated with the attainment of at least a baccalaureate degree in veterinary technology or its equivalent.

For the reasons discussed above, the record does not establish that the veterinary technician position proffered by the petitioner is a specialty occupation.

Turning to the regulatory criteria for qualifying to perform the services of a specialty occupation, the record does not establish that the beneficiary holds a U.S. baccalaureate or higher degree required by a specialty occupation from an accredited college or university. Thus, the beneficiary does not meet the first alternative criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*). Nor does the record establish that the beneficiary holds a foreign degree equivalent to a U.S. baccalaureate or higher degree required by a specialty occupation from an accredited college or university. Thus, the beneficiary does not meet the second alternative criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*). Furthermore, there is no evidence that the beneficiary holds an unrestricted state license, registration, or certification authorizing her to practice a specialty occupation in Massachusetts, her intended state of employment. Thus, the beneficiary does not meet the third alternative criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(C)(*3*).

With respect to the fourth alternative criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) – *i.e.*, education, specialized training, and/or progressively responsible experience equivalent to a U.S. degree in the specialty occupation – the petitioner asserts that the specific skills required for handling birds, reptiles, and other exotic animals are usually not taught in a formal degree program, such as a traditional veterinary technician program. Rather, training is obtained in apprenticeships at veterinary hospitals

providing care for such animals, such as the Bird and Exotic Animal Hospital in Montreal. As previously discussed, there is evidence in the record that the beneficiary took an intensive three-month training course at that hospital to become an avian and exotic animal health technician and worked at the hospital for almost two years. In lieu of a baccalaureate or higher degree in the specific specialty, however, the regulation requires the beneficiary to have education, specialized training, and/or progressively responsible experience equivalent thereto. As specified in 8 C.F.R. § 214.2(h)(4)(iii)(D), "equivalence to completion of a college degree" is determined by one or more of the following:

(*1*) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(*2*) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(*3*) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(*4*) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(*5*) A determination by the Service [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks.

The beneficiary does not satisfy any of these criteria. The record does not contain any of the documentary evidence referenced in items (*1*) to (*4*) of the regulation. As previously discussed, the petitioner has not provided any educational credentials evaluation for the beneficiary despite the director's specific request for such documentation. In addition, the record does not show that the beneficiary has amassed the requisite combination of education, specialized training and/or work experience referenced in item (*5*). The AAO notes that the two years of work the beneficiary allegedly logged at the Bird and Exotic Animal Hospital in Montreal count for less than one year of college-level training in the specialty occupation.

For the reasons discussed above, the petitioner has not established that the beneficiary is qualified to perform the services of a specialty occupation.

There is one additional reason the instant petition cannot be approved. The record contains no evidence that the petitioner filed a timely labor condition application (LCA) that was certified by DOL. It is specifically provided in the regulations that:

> *Before filing a petition for H-1B classification* in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

8 C.F.R. § 214.2(H)(4)(i)(B)(*1*) (emphasis added). The petitioner has provided no evidence that a certified LCA was obtained from DOL before the instant H-1B petition was filed. Based on the petitioner's handwritten notation in response to the second RFE, it appears that the LCA was not submitted to DOL until November 2003, seven months after the H-1B petition was filed in April 2003.

In conclusion, the record fails to establish that the veterinary technician position is a specialty occupation, that the beneficiary is qualified to perform the services of a specialty occupation, and that the petitioner filed a timely labor condition application that was certified by DOL.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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