



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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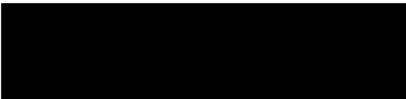
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FEB 28 2001

File: SRC-00-003-52848 Office: Texas Service Center

Date:

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:



Identification card ordered to prevent identity unscrutinized invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a dairy business with 15 employees and \$2,000,000 gross annual income. It seeks to employ the beneficiary as a dairy manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner's owner argues that the proffered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

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 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 beneficiary's foreign education has been found by a credentials evaluation service to be equivalent to a first professional degree in veterinary medicine (D.V.M.), a master's degree and earned doctorate (Ph. D.) in veterinary science from a U.S. regionally accredited institution. This evaluation is based upon the beneficiary's baccalaureate degree in veterinary medical science, master of veterinary science degree, and doctor of philosophy degree in veterinary science from an Egyptian institution. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

The term "specialty occupation" is 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.

The duties of the proffered position are described in pertinent part as follows:

Supervisor of employees and oversee all the operations.

A-milking

Ensure that all milking personnel are trained in the proper technique for milking cows.
Monitoring milk quality by prevention and control of diseases through vaccination programs.
Ensure and responsible for all sanitary and hygiene requirements for the dairy
Ensure that mastitis control program and treatment of clinical cases
Ensure that all milk equipment is properly used and maintained.
Meet or exceed milk production goals.

B-Herd health

Ensure that all departmental personnel are trained in the proper procedures for cow care.
Ensure that all personnel are properly trained to identify sick cows and cows in heat.

Vaccination programs and treatment of hospital pen

C-Breeding

Artificial insemination and animal reproduction

D-Yong [sic] stock (Calves) management

Ensure that Calves program and vaccination as the management protocol

E-Feeding

Ensure that all personnel are properly trained for feeding protocol

Ensure that feeding quality and feeding quantity

F-Computer work

Computer record posting

Report to the owner

Analyses of the data

Perform all personnel evaluations on a timely basis

G-Financial management.

Which [is] based on four basic functions

1-Establish goals

2-Determine where business stands relative to goals.

3-Select courses of action that move the business in the desired direction.

4-Control business performance to insure that selected courses of action in realization of goals.

H-Cow management decisions.

-Breeding

-Treatment

-Vaccination

-Culling

-Evaluation

-Etc.

In an undated letter, an expert states as follows:

The Baccalaureate degree has been a normal minimum requirement in many successful dairy operations. Traditionally the owner/operators have held the degrees (Bachelors of Science in either Dairy Science or Animal Science). Skills in agronomy, nutrition, personnel management and animal husbandry are critical to the success of the dairy business. Level of skill required

in each of these areas are only available at Bachelor degree educational levels.

The demands of the dairy business have required more time of owner/operator to managed [sic] the financial and environmental regulations. This has created a demand to transfer the duties and responsibilities of agronomy, nutrition, personnel management to a qualified Dairy Operations Manager. The Dairy Operations Manager in this small dairy enterprise is responsible for over \$3,000,000 in milk sales, \$1,000,000 in livestock and \$750,000 farming operations. The financial risk is obvious and a minimum requirement of Baccalaureate degree helps insure that the foundation of skill is present to fulfill the duties of Dairy Operations Manager. The requirement for degree holders is not only normal but fast becoming a necessity.

In a letter dated February 4, 2000, another expert states as follows:

Managers of intensive dairy farms must have more than in-depth knowledge of bovine health, nutrition, and reproduction. They must also be able to interface with nutritionists, reproductive specialists and veterinary consultants. They also, must be trained in small business management such as making and managing budgets and hiring and training replacement personnel. They must have the remarkable ability to manage in a work environment that demands constant attention 24 hours a day, seven days each week for 52 weeks of every year, without the slightest respite.

The proffered position appears to be that of a farm manager. The Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 43-45 finds that the usual requirement for employment as a farm manager is a baccalaureate degree in agriculture or related degree. 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 regulations.

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.