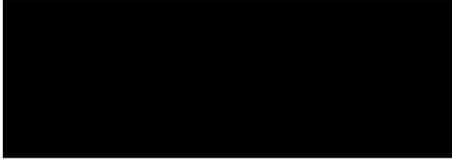




U.S. Department of Justice  
Immigration and Naturalization Service

D2

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



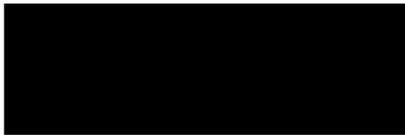
File: EAC-99-119-52536 Office: Vermont Service Center Date: JAN 25 2001

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)

**PUBLIC COPY**

IN BEHALF OF PETITIONER:



identification data deleted to  
prevent clearly unwarranted  
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

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was approved by the Director, Vermont Service Center. Upon further review, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. The case is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a veterinary clinic with 11 employees and \$851,061 gross annual income. It seeks to employ the beneficiary as a veterinary technologist. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel 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 holds a bachelor of science degree with a major in veterinary technology conferred by a U.S. institution. The beneficiary also passed the New York State licensing exam, authorizing her to practice veterinary technology with the state. 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:

emergency and trauma care, pre-operative and post-operative care, including anaesthesia, administration of drugs and fluids, radiography and dentistry, the collection of specimens, the performance of complex laboratory procedures on small animals, husbandry and nutrition as well as client communication.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the proffered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to be that of a veterinary technologist. The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at

page 522 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a veterinary technologist. Rather, the most significant source of training is an associates degree. The Handbook describes the duties of the veterinary technician and technologist as: perform medical tests in a laboratory environment for use in the treatment and diagnosis of diseases in animals; prepare vaccines and serums for prevention of diseases; prepare tissue samples, take blood samples, and execute laboratory tests such as urinalysis and blood counts; and clean and sterilize instruments and materials and maintain equipment and machines.

On appeal, counsel argues that the beneficiary's proposed duties are far more complex than those of a veterinary technician. Counsel further argues that the beneficiary's proposed duties are so complex that they could only be performed by an individual with a baccalaureate degree. The duties that go beyond those of a veterinary technician are described in part as follows:

the operation of state-of-the-art diagnostic equipment and the performance of complex and intricate procedures such as administering and monitoring anesthesia, radiography, fluid therapy administration and I.V. catheter placement and minor surgical procedures.

The record is supported by a letter from the chairperson of the veterinary technology program of New York's Mercy College dated January 29, 1999, that states in part that:

This letter is to inform of the growing need for and trend toward baccalaureate degrees in Veterinary Technology.

The rapid increase in the use of extremely sophisticated technology and complex procedures in veterinary medicine has resulted in the need for highly educated and trained ancillary professionals to assist in the delivery of medical and surgical services. This need is being met by the profession of Veterinary Technology.

The nature of the specific duties are so specialized and complex that the knowledge required for skillful performance is usually associated with attainment of the Bachelor Degree.

Despite the petitioner's argument that there is a growing need and trend toward baccalaureate degrees in veterinary technology, the record does not demonstrate that a baccalaureate degree or its equivalent is normally the minimum requirement for entry into a veterinary technology position (emphasis added). Further, the petitioner has compared the proffered position to that of a medical

technologist, indicating that "both fields perform the same functions and duties, the only distinction being that one works in the area of human medicine and the other works in the area of animal medicine." The Handbook at page 219 indicates that although the usual requirement for an entry level position as a medical or clinical laboratory technologist is a bachelor's degree with a major in medical technology or in one of the life sciences, it is also possible to qualify through a combination of specialized and on-the-job training (emphasis added). As such, the record does not persuasively establish that the duties of the proffered position are so complex that they can be performed only by an individual with a degree. In view of the foregoing, it is concluded that the petitioner has not 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 not sustained that burden. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.