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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: LIN-99-255-51568

Office: Nebraska Service Center

Date: JUN 19 2001

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: SELF-REPRESENTED

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

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.

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 dismissed.

The petitioner is dairy farm with 20 employees and an approximate gross annual income of \$2 million. It seeks to employ the beneficiary as a dairy scientist 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 submits a statement.

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.

The director denied the petition because the petitioner had not established that the beneficiary's proffered duties are so specialized and complex as to require a baccalaureate or higher degree. On appeal, the petitioner's president states in part that the majority of the beneficiary's duties would involve animal diagnosis, treatments, and surgeries. He also states that the beneficiary would be the petitioner's full time on-farm veterinarian.

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.

In addition to the duties mentioned above, the duties of the proffered position are described in pertinent part as follows:

- a) Examine cows for pregnancy by manual palpation of the genital tract. These are skills that [the beneficiary] learned in Veterinary College. This duty will require 20% of time.
- b) Examine problem breeder cows by manual palpation of the genital tract. This includes palpation of the vagina-cervix uterine body, both uterine horns, both uterine tubes, both ovaries, and ovarian bursas. He will recommend treatments based on results of his exam. This duty will require 10% of time.
- c) Monitor and evaluate all cows during the calving process. Assist all cows that develop a calving problem. This duty will require 10% of time.
- d) Monitor our calf health program from birth to 4 days of age. This includes tests to document adequate amounts of colostrum (first milk after calving), observation for all types diarrhea, diagnosis and treatment of each

disease. (Calves are moved to another farm on the fourth day of life.) This duty will require 10% of time.

e) Monitor and improve our mastitis control program. Culture all cases of mastitis, determine which treatments to use and test milk for any treatment residues. This duty will require 10% of time.

f) Perform a complete physical exam on any and all sick cows in the herd. We normally have 30 sick cows in our hospital pen each day that must be examined and treated. This duty will require 20% time.

g) [The beneficiary] will closely monitor all cows after calving for daily body temperature, appetite, feed intake, mastitis, milk fever, ketosis, and digestive tract problems. This is a critical time in a cow's life so this program is very important. This duty will require 10% of time.

h) Nutrition consultation. [The beneficiary] has special skills and experience in dairy cow nutrition in small herds. He desires to gain experience working with large herds. [The beneficiary] will monitor all aspects of nutrition including feed analysis, particle size, percent moisture, mixing density, feed intake, body condition and feed refusal.

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.

Beyond the decision of the director, although the record indicates that the beneficiary possesses a doctor of veterinary medical science degree conferred by an Austrian institution, the record contains no evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(3). For this reason, the petition may not be approved.

We note our authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within our power to formulate. *Helvering v. Gowran*, 302 U.S. 238 (1937); *Securities* [redacted] Corp., 318 U.S. 86 (1943); and *Chae-Sik Lee v. Kennedy*, 294 F. 2d (D.C. Cir. 1961), cert. denied, 368 U.S. 926.

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.