



DA

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: WAC-00-089-53144 Office: California Service Center

Date: OCT 11 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:



Identifying 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

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 dismissed.

The petitioner is a dairy farm with 60 employees and a gross annual income of \$12 million. It seeks to employ the beneficiary as an artificial breeding ranch 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, counsel submits a brief.

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 proffered position did not appear to require professional skills. On appeal, counsel states in part that the proffered duties require a sophisticated knowledge of animal science and/or veterinary medicine.

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:

The Artificial Breeding Ranch Manager will supervise and coordinate activities of workers engaged in caring for cattle and collecting bull semen. He/she will perform studies, and will prepare records to determine feed rations, bull temperament, fertility and buyer demand, to develop semen collection schedules. He/she will observe behavior and appearance of the cattle to detect illness or injury. He/she will supervise workers engaged in collecting and processing bull semen, and will analyze samples using spectrometers and microscopes. In addition, he/she will coordinate results of analysis with our veterinarian and to demonstrate artificial insemination techniques to farmers to promote use of products.

The record contains a letter dated May 17, 2000, from an academic expert who states in part that:

I am the veterinarian in charge of Maddox Farms and have held this position for over fifteen years. There are three farms with more than 10,000 head of Holstein cattle involved. Their health and reproduction are my responsibility. Reproduction, especially the embryo transfer program take up most of my time. Unfortunately, too little of my personal time is allotted to other essential health duties.

Maddox Dairy is the biggest and most important farm in the operation. They care for over 6,000 head of Holstein cattle, milking close to 3,500 head...

...I have developed a program which would require additional veterinary help. A full-time experience[d] veterinarian is needed...

[The beneficiary's] responsibilities would be many. He is to develop and oversee programs in preventive medicine. He also must diagnose and manage the treatment of sick cows. Surgical work is required. Management is needed in our maternity area. Foot care, reproduction, and young stock health issues are added responsibilities.

The proffered position appears to be that of a farm manager. A review of 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 bachelor's degree in veterinary medicine conferred by a Brazilian 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 Com'n v. Chenery 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.