

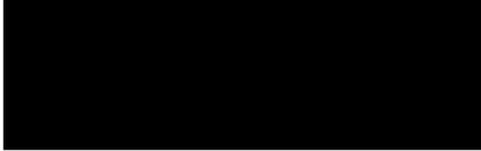


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U.S. Department of Justice
Immigration and Naturalization Service

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

PUBLIC COPY



File:

Office: Nebraska Service Center

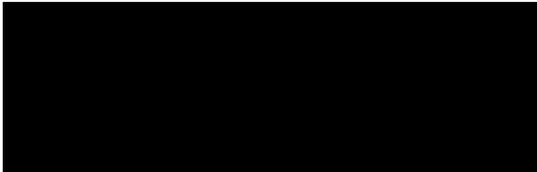
Date: 18 NOV 2002

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 that 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 that 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 that 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, 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 and the petition will be approved.

The petitioner is a dairy farm with 27 employees and stated gross annual income of \$6 million. It seeks to employ the beneficiary as a dairy farm manager for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in the specialty occupation.

On appeal, counsel 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 determined that the beneficiary was not qualified to perform the duties of the proffered position because he did not possess at least a baccalaureate degree or its equivalent. On appeal, counsel argues that the beneficiary is qualified to perform the duties of the offered job because his education and work experience are the equivalent of a bachelor's degree in farm management as awarded in the United States.

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 possesses the following diplomas and certificates from these South African institutions and enterprises: 1) an agricultural diploma from Lyceum College; 2) a diploma in livestock sciences from the Institute of Vocational Studies; 3) a certificate of achievement from the New Horizon Equine Education Center, Inc., for the completion of a course of study in stable management; 4) a certificate for successful completion of a course in artificial insemination from the Taurus Co-op; 5) a certificate of completion for an interaction management program; and, 5) a certificate of attendance for a four day training course in industrial relations from Rainbow Chicken Farms. Clearly, the beneficiary is not qualified to perform services in a specialty occupation based upon his education alone.

The record contains a detailed two page letter signed by C. Brooks, Farms Services Manager for Rainbow Farms (PTY) Ltd., in Rustenburg, Transvaal, South Africa. In this letter, Mr. Brooks states that the beneficiary was employed by this enterprise as a farm manager and then a senior farms manager from June 1987 to September 1999, a period of twelve years and three months. Mr. Brooks indicated that as a senior farms manager, the beneficiary was responsible for five farms with a staff 42 general workers, five farm managers, five farm foreman, and five supervisors. Mr. Brooks declares that the beneficiary's duties in this position included the following:

...the complete management of all high-density agricultural operations on the five intensive livestock facilities. [The beneficiary] was accountable for daily

production operations on these farms, which in addition to the day-to-day running and care of the animals encompassed labour issues, financial accounts and budgeting, and future planning. All the animal health programmes, animal protocols and schedules and seasonal timetables fell under his jurisdiction, as did all the animal care, medicine, work, rearing and practical production of produce for the local and international markets.

The record contains an evaluation of the beneficiary's work experience from an evaluation service. The evaluator states that for the purposes of determining equivalency in reviewing the beneficiary's employment, he has utilized a standard of three years of work experience equal one year of university-level credit. The evaluator concludes that the beneficiary possesses the equivalent of a bachelor's degree in farm management as awarded at an institution of higher learning in the United States as a result of his twelve years and three months of experience as a farm manager and a senior farms manager for Rainbow Farms (PTY) Ltd. This conclusion appears reasonable and shall be accepted. It must be further noted that the beneficiary has undertaken formal education and technical training in a range of subjects directly related to a degree in farm management. Accordingly, it is concluded that the petitioner has overcome the sole basis of the director's denial and shown that the beneficiary qualifies to perform the duties of the offered 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 offered position are described as:

...supervision and coordination of activities of workers engaged in milking, breeding, and caring for cows. He will also perform lay veterinary duties and see to the general administration of the farm.

The offered position is that of a farm manager. The Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at pages 47-50 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 offered position is a specialty occupation within the meaning of the 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 decision is withdrawn and the petition is approved.