

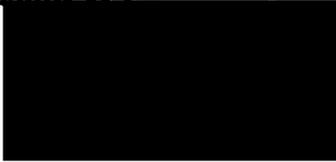


DA

U.S. Department of Justice

Immigration and Naturalization Service

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



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

File: LIN-00-040-52758 Office: Nebraska Service Center

Date: SEP 30 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:



**PUBLIC COPY**

**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.

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 The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is a dairy and crop farm with five employees and a gross annual income of \$100,000. It seeks to employ the beneficiary as a dairy herd 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 petition was denied by the director because the petitioner had not demonstrated that the proffered position required a baccalaureate degree. On appeal, counsel states, in part, that the proposed duties, which include personnel management, operational management and administration, and marketing and financial management, are so complex that a baccalaureate degree in agriculture, business administration, or a related field is required. Counsel also states that the petitioner normally requires such degree. Counsel additionally submits an expert opinion.

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 the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The Dairy Herd Manager will be responsible for managing, directing and coordinating the operations of the Dairy enterprise of the farm. His or her responsibilities will include planning, developing, and implementing policies, procedures and operating practices. It will be incumbent upon the Dairy Herd Manager to ensure compliance of owner's standards for farm Dairy production, propagation of herd, as well as compliance with regulations of regulatory agencies. He will meet with subordinate supervisors to plan and coordinate operation and activities. He will be responsible for all operations relating to herd health, breeding, milking, feeding, feed and care of calves and fresh cows, maintenance and care of equipment, etc. He will also be responsible for monitoring production and marketing as well as managing the budget and finances for the Dairy enterprise and maintain financial and activity reports.

In a letter dated August 4, 2000, an academic expert states, in part, that:

Under our old program, dairy production students would receive a degree in Animal Science with a dairy emphasis. Now, dairy students will receive a degree in Dairy Science. In developing this degree program, we made provisions for increasing demands of the dairy industry for college-educated dairy farm managers.

Based on changes and trends in the dairy production industry, I believe that management of a modern dairy herd requires a bachelor's degree or its equivalent. Our dairy faculty at UWRF receive numerous requests for our graduates to apply for jobs on dairy farms all over the Midwest. The job has become more complex, more technically challenging, and most of all, much more business-oriented in recent years. This is because of narrowing margins, increasing herd size, and increasing dollar volume at risk. Many aspects of a college education contribute significantly to the ability of a person to manage a dairy herd, including general education, technical courses, business courses, extracurricular activities, and internships.

The proffered position appears to be that of an agricultural manager. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at pages 48-49, finds that a bachelor's degree in business with a concentration in agriculture, or related degree, is important. In addition to a formal education, several years of work experience in the different aspects of farm and ranch operations are needed in order to qualify for an agricultural manager position.

It is noted that not all agricultural manager positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specialized and related area. 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 director has not determined whether the beneficiary qualifies to perform services in the specialty occupation. It is noted that, although not explicitly stated, the academic expert suggests that a baccalaureate degree in dairy science is required for positions similar to the proffered position. It is also noted that the credentials evaluator found the beneficiary's work experience equivalent to a bachelor's degree in business administration awarded by a regionally accredited U.S. university. Business administration, however, is a general term including both professional and nonprofessional activities. A degree in business

administration alone is, consequently, insufficient to qualify the holder as a member of the professions unless the academic courses pursued and the knowledge gained are realistic prerequisites to a particular occupation within the broad field of business administration and unless that person is engaged, or intends to engage, in that occupation. Matter of Ling, 13 I&N Dec. 35 (Reg. Comm. 1968). It is additionally noted that the record does not contain any corroborating evidence to support the evaluator's finding such as an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1). Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.