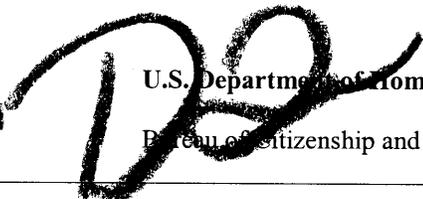


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



10/11/2008

File: LIN 01 191 52047 Office: NEBRASKA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:



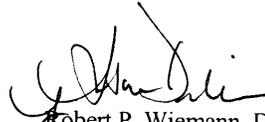
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a dairy farm with ten employees and a gross annual income of \$1.5 million. It seeks to employ the beneficiary as a dairy management specialist for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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.

The term "specialty occupation" is further 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.

The director determined the petitioner had not demonstrated that the proffered position required a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the position requires the theoretical and practical application of a body of highly specialized knowledge, applied animal science, and the attainment of a baccalaureate degree in a specific specialty. Counsel states that the director has previously approved other H-1B petitions for similar positions filed by this petitioner and by other dairy farmers.

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

- Study and evaluate the nutritional needs of the outstanding individual cows, and of the different groups of cows according to their level of production and relative body condition;
- Prescribe and prepare rations accordingly for each group taking into account cows' nutritional needs,

and availability and feasibility of differing potential ingredients, including home-grown grains and forages using chemical techniques;

- Conduct research and design experiments to determine effects of different kinds of feed, and environmental factors on the quantity and quality of produced dairy;
- Observe and document any and all milking abnormalities;
- Diagnose any and all nutritional problems of cattle;
- Observe and study physiology of reproduction and lactation, and carry out breeding programs to improve dairy breeds;
- Administer to cattle medications, vaccines for disease prevention, protocols, and BST shots;
- Maintain and manage inventory control of semen banks for artificial insemination. Arrange for increase to inventory as becomes necessary;
- Develop improved practices in the care and management of dairy herds and use of improved buildings and equipment;
- Attend management meetings and participate in the decision-making process[.]

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 47-49, finds that a bachelor's degree in business with a concentration in agriculture 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 specific specialty. 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 also determined that the beneficiary's degree in veterinary medicine does not qualify him to perform the duties of the position in question.

On appeal, counsel asserts that the beneficiary qualifies to perform services in the specialty occupation.

The record shows that the beneficiary was awarded a Diploma in Veterinary Science with specialty in Veterinary from a Russian institution. A credentials evaluator found the beneficiary's degree equivalent to a Bachelor of Science degree in Veterinary Science from an accredited institution in the United States. The beneficiary has also completed a one-year training period in Animal Husbandry - Dairy Production as a nonimmigrant J-1 exchange visitor under the sponsorship of KELI Global Group, Inc. In view of the foregoing, it is concluded the petitioner has shown that the beneficiary qualifies to perform services in the specialty occupation.

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.

ORDER: The appeal is sustained. The petition is approved.