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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



File: SRC 02 024 53566

Office: TEXAS SERVICE CENTER

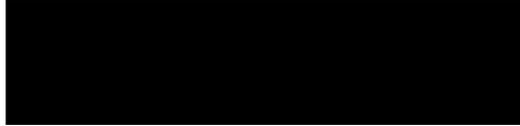
Date: JUN 18 2003

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:



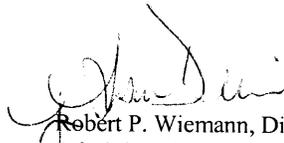
INSTRUCTIONS:

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, Texas Service Center, and is now before the Administrative Appeals Office ("AAO") on appeal. The director's decision will be withdrawn and the matter will be remanded for further consideration and action.

The petitioner is a new equine veterinary practice. It seeks to employ the beneficiary as a veterinarian assistant. The director determined the petitioner had not shown that the proffered position is 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 proffered position is that of a veterinary assistant, an occupation that does not normally require a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the beneficiary will perform the traditional duties of an equine veterinarian with the exception

of the immunization of horses and treatment of horses for diseases that are communicable to humans and are of public health significance. Counsel states that the performance of these duties is allowed in the State of Florida under an exemption provided for in the Veterinary Practices Act.

In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the position as follows:

[The beneficiary] will perform traditional veterinarian duties concerning horses, which include diagnosing and treating. . . diseases and injuries; examining horses to determine nature of disease or injury and treat[ing] animal surgically or medically; testing horses for diseases and inoculating against disorders; advising horse owners about sanitary measures, feeding and general care to promote health of horses [.]

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 director determined the proffered position is that of a veterinary assistant. Upon further review, it is concluded that

the duties of the position are those of a veterinarian. The Department of Labor ("DOL") describes the duties of veterinarians in private large animal practice at pages 274-275 of the *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, as follows:

A small number of private practice veterinarians work exclusively with large animals, focusing mostly on horses or cows, but may also care for various kinds of food animals. . . . These veterinarians test for and vaccinate against diseases and consult with farm or ranch owners and managers on animal production, feeding, and housing issues. They also treat and dress wounds, set fractures, and perform surgery - including cesarean sections on birthing animals. Veterinarians also euthanize animals when necessary.

In this case, the beneficiary will diagnose and treat diseases and injuries surgically or medically; test horses for diseases and inoculate against diseases; and advise horse owners about sanitary measures, feeding and general care to promote the health of horses. These are the duties of a large animal veterinarian as described above.

According to the *Handbook* at pages 275-276:

Prospective veterinarians must graduate from a 4-year program at an accredited college of veterinary medicine with a Doctor of Veterinary Medicine (D.V.M.) degree and obtain a license to practice.

. . . .

All States and the District of Columbia require that veterinarians be licensed before they can practice. . . . The Educational Commission for Foreign Veterinary Graduates (ECFVG) grants certification to individuals trained outside the U.S. who demonstrate that they meet specified requirements for the English language and clinical proficiency. ECFVG certification fulfills the educational requirement for licensure in all States except Nebraska.

The record shows that the beneficiary was awarded the *Titulo de Medico Veterinario* ("Title of Veterinary Medicine") by a

Venezuelan university. A credentials evaluator found the beneficiary's foreign education equivalent to a Doctor of Veterinary Medicine degree from an accredited college or university in the United States. The petitioner has not, however, provided any evidence to show that the beneficiary is licensed to practice veterinary medicine in the State of Florida or that he has received certification in veterinary medicine from the ECFVG.

On appeal, counsel asserts that the beneficiary is entitled to perform the duties of a veterinarian in the State of Florida even though he does not possess a Florida veterinarian license. The record contains a letter from [REDACTED] Assistant Attorney General, Counsel to the Florida Board of Veterinary Medicine, along with a document from the Florida Board of Veterinary Medicine summarizing the requirements for licensure as a veterinarian in that state.

It is noted that Mr. [REDACTED] letter was not written to the petitioner in response to a request for information as to whether this beneficiary is entitled to function as a veterinarian in the State of Florida. Mr. [REDACTED] letter was written to the head veterinarian of a different veterinary practice and concerned circumstances different from those present in this case. Nevertheless, this letter does cite section 474.205(5) of the Florida statute, providing the following exemption from the Veterinary Practice Act:

(5) Any person, or the person's regular employee, administering to the ills or injuries of her or his own animals, including, but not limited to, castration, spaying, and dehorning of herd animals, unless title has been transferred to employment provided for the purpose of circumventing this law. This exemption shall not apply to out-of-state veterinarians practicing temporarily in the state. However, only a veterinarian may immunize or treat an animal for diseases which are communicable to humans and which are of public health significance.

In this case, the beneficiary would not be providing veterinary care to horses owned by Equine Business Corporation. Rather, the beneficiary would be providing veterinary care to horses owned by the petitioner's clients. Additionally, the beneficiary would be working as an employee of Equine Business Corporation, not as

an employee of the owners of the horses for which he would care. Furthermore, this exemption does not apply to out-of-state veterinarians practicing in the State of Florida. Clearly, the exemption cited above does not pertain to this petitioner or to this beneficiary.

Accordingly, the matter will be remanded to the director to make a determination as to whether the beneficiary qualifies to perform the duties of a veterinarian in the State of Florida. The director may request any additional evidence she 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 for further consideration and action consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.