

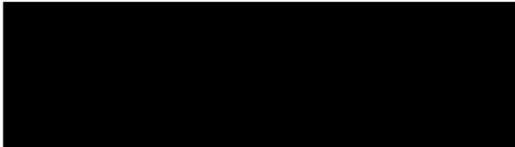
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



MAY 01 2003

File: EAC-02-050-52929 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

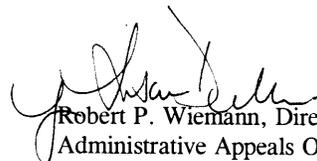
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:  
[Redacted]

**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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is a nonprofit veterinary hospital with 355 employees. It seeks to employ the beneficiary as a veterinary technician 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 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined 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 denied the petition because the petitioner has not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the petitioner distinguishes between junior veterinary technicians and senior veterinary technicians based on the complexity of the procedures involved. Counsel further states that a bachelor's degree or an equivalent thereof, is normally required of all of its senior level veterinary technicians.

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

As a Veterinary Technician, [the beneficiary] will perform a variety of animal health care duties to assist the veterinarians. She will prepare for all surgical procedures, provide proper aseptic technique for the operating room, and work in the outpatient department. [The beneficiary] will also perform physical exams, review radiographs and lab work. She will complete client history and questionnaire and perform the data entry of the information. [The beneficiary] will prepare medications, schedule patients for surgery, and assist the surgeon in all facets of care, which includes minor surgical procedures, bandaging and splinting, and physical therapy.

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 its *Occupational Outlook Handbook*, 2002-2003 edition, at page 596, the Department of Labor finds that the most significant source of training for veterinary technologists and technicians is an associate degree. As such, not all veterinary technician positions may be considered specialty occupations. Rather, each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the petitioner is a major veterinary teaching hospital in the United States, and the petitioner has provided evidence that it normally requires that its senior veterinary technicians hold 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 a specialty occupation. It is noted that the New York State Education Department's website, <http://www.op.nysed.gov/vt.htm>, indicates that a person performing the duties of a veterinary technician in the State of New York must be licensed. 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 AAO for review.