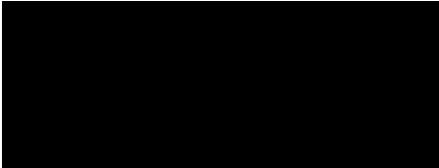


U.S. Department of Homeland Security

Citizenship and Immigration Services

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

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street N.W.  
Washington, DC 20536



File: LIN 02 091 54267 Office: NEBRASKA SERVICE CENTER Date:

NOV 14 2003

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(1)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(1)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

**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.

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 Citizenship and Immigration Services (CIS) 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 Director of the Nebraska Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a dairy farm in [REDACTED] with twenty employees and a gross annual income of \$3,500,000. It seeks to employ the beneficiary as a veterinarian for a period of three years. The director determined that the petitioner had not established that the beneficiary had obtained the necessary license to work in the State of Michigan.

On appeal, the petitioner asserts that the beneficiary is eligible to perform the duties of a veterinarian pursuant to 8 C.F.R. § 214.2(h)(4)(v)(C), because he will be supervised by a licensed senior practitioner.

The issue in this proceeding is whether the petitioner has established that the beneficiary is currently eligible to practice veterinary medicine in the State of Michigan.

With regard to licensure for H classification, 8 C.F.R. § 214.2 (h) (4) (v), states the following:

(A) *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

(C) *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

The beneficiary's proposed job duties are described thusly in the record:

1. Diagnose the sick cows and calves, administer medicine and treatments according to farm protocols.
2. Aid in the calving of animals, and care for the newborn calves.
3. Artificially inseminate the milking cows.
4. Diagnose pregnancy in milking cows and replacement heifers.
5. Monitor and amend vaccination protocols on the farm.
6. Serve as an assistant to the herdsman in the general management of the herd.

The description of the duties of a veterinarian provided by the Michigan Board of Veterinary Medicine is as follows:

The practice of veterinary medicine, as defined in the Public Health Code, means prescribing or administering a drug, medicine, treatment or method of procedure; performing an operation or manipulation; applying an apparatus or appliance, or giving an instruction or demonstration designed to alter an animal from its normal condition; curing, ameliorating, correcting, reducing, or modifying a disease, deformity, defect, wound, or injury in or to an animal, diagnosing or prognosing, or both, a disease, deformity or defect in an animal by a test, procedure, manipulation, technique, autopsy, biopsy, or other examination.

The proffered duties are those of a veterinarian. There is no evidence in the record that the beneficiary holds a license to practice veterinary medicine in the State of Michigan. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Comm. 1978).

Alternatively, 8 C.F.R. § 214.2(h)(4)(v)(C) outlines circumstances in which a beneficiary may work with a temporary license or without a license when the state permits such work under supervision. According to the Michigan Bureau of Health Services, no individual may practice veterinary medicine in that state without a license, whether under supervision or independently. Thus, the beneficiary would not be able to perform the proposed duties without a license, even under supervision.

The petitioner has failed to establish that the beneficiary possessed the required license in order to perform the proffered position at the time of filing of the instant petition. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform 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 not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.