



U.S. Citizenship
and Immigration
Services



FILE: SRC 03 075 51421 Office: TEXAS SERVICE CENTER Date: DEC 10 2004

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:
SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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
Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

D2

DISCUSSION: The director of the Texas 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 veterinary office that cares for domestic and farm animals. It seeks to hire the beneficiary as a veterinary technician. The director denied the petition because she determined the proffered position did not meet the criteria required for classification as a specialty occupation. On appeal, the petitioner submits a brief and previously-submitted documentation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

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.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a veterinary technician. Evidence of the beneficiary’s duties includes: the Form I-129; a January 13, 2003 support letter from the petitioner accompanying the Form I-129; and the petitioner’s response to the director’s request for evidence.

In its January 13, 2003 letter, the petitioner stated the beneficiary’s duties would require him to:

- Obtain and record information about cases;
- Assist the veterinarian doctor in diagnostic, medical and surgical procedures;
- Advise animal owners about sanitary measures, feeding, and general care to promote the health of animals;
- Prepare patients, instruments and equipment for surgery, collect specimens, perform certain laboratory procedures and dress wounds;
- Assist in conducting regularly scheduled immunization and preventive care programs to maintain the health of animals; and
- Participate with other personnel in planning and executing nutrition programs for farm animals.

The petitioner further described the beneficiary’s duties in its October 6, 2003 response to the director’s request for evidence, stating that the position required the beneficiary to apply a knowledge of animal science and medicine, animal pathology, anatomy, clinics, physiology, genetics, reproduction, nutrition, microbiology and immunology.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its

equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In her denial, the director concurred with the petitioner's characterization of the proffered position as that of a veterinary technician but found that it did not qualify as a specialty occupation per the requirements set forth at 8 C.F.R. § 214.2 (h)(4)(ii). Following its own review of the duties of the proffered position, the AAO also concludes that the position is that of a veterinary technologist or technician, as described in the 2004-2005 edition of the *Handbook*, but does not qualify as a specialty occupation.

The *Handbook's* discussion of the educational or training background required of those individuals who wish to work as veterinary technicians or technologists is as follows:

There are primarily two levels of education and training for entry to this occupation – a 2-year program for veterinary technicians and a 4-year program for veterinary technologists. Most entry-level veterinary technicians have a 2-year degree, usually an associate degree, from an accredited community college program in veterinary technology....

Each State regulates veterinary technicians and technologists differently; however, all States require them to pass a credentialing exam following coursework. Passing the State exam assures the public that the technician or technologist has sufficient knowledge to work in a veterinary clinic or hospital. Candidates are tested for competency through an examination that includes oral, written, and practical portions. This process is regulated by the State Board of Veterinary Examiners, or the appropriate State agency. Depending on the State, candidates may become registered, licensed or certified.

In its response to the director's request for evidence and on appeal, the petitioner has asserted that the occupation of veterinary technician requires the attainment of a bachelor's degree as it requires the beneficiary to perform work that is both specialized and complex. While the AAO acknowledges the petitioner's desire to hire an individual with a bachelor's or higher degree to fill the proffered position, it is not the petitioner's preferences that dictate whether a position qualifies as a specialty occupation under Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). That determination can only be made through the application of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree.

Based on its determination that the proffered position is that of a veterinary technician and that the DOL *Handbook* states that entry level positions for veterinary technicians may be filled by applicants with degrees from both two-year and four-year programs, the proffered position does not meet the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To determine whether the petitioner's position meets the second criterion – that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty – the AAO has reviewed the related materials submitted by the petitioner in response to the director's request for evidence and on appeal: a series of Internet job postings for veterinary technicians and materials published by the National Association of Veterinary Technicians in America (NAVTA) and the American Veterinary Medical Association (AVMA).

The series of Internet job postings submitted by the petitioner do not constitute evidence that businesses similar to the petitioner's and with parallel positions require the services of individuals with baccalaureate degrees. After reviewing these job announcements, the AAO finds no evidence that establishes the organizations seeking veterinary technicians have similar operations to the petitioner's, nor do the position descriptions establish that the positions are parallel to that described by the petitioner. Further the printed materials from the National Association of Veterinary Technicians in America and the American Veterinary Medical Association do not establish that the industry has a specific degree requirement for the occupation of veterinary technician. While the NAVTA fact sheet states that veterinary technicians graduate from two-year programs and veterinary technologists from four-year bachelor degree programs, it does not address the industry's degree requirement for entry-level positions. The information provided by the AVMA states only that a career in veterinary technology requires a minimum of two years college education. As a result, the AAO concludes that neither the job postings, nor the other materials submitted by the petitioner, establish that the degree requirement for the proffered position is common to the petitioner's industry.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, in the instant case, the petitioner has provided no evidence that would allow the AAO to make a determination as to its normal practices.

The fourth criterion requires that the petitioner establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. In assessing whether the petitioner has met its

burden with regard to this criterion, the AAO has reviewed the duties of the proffered position as described by the petitioner in its January 13, 2003 letter of support, and its response to the director's request for evidence.

The petitioner has consistently asserted -- at the time of filing, in its response to the director's request for evidence and on appeal -- that the duties of its proffered position are highly specialized and complex. It has, however, offered no evidence to establish that these duties are more specialized or more complex than those normally handled by a veterinary technician as described in the 2004-2005 edition of the *Handbook*. Per the *Handbook*, the performance of the duties of veterinary technician does not require a baccalaureate or higher degree, but may be handled by individuals with two-year associate degrees.

In the absence of evidence from the petitioner articulating how its position is distinguished from that of other veterinary technicians, its assertions regarding the specialized and complex nature of its position are not persuasive. Simply going on record is not sufficient for meeting the burden of proof in this proceeding. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg.Comm. 1972). As a result, the AAO concludes that the petitioner has failed to meet the requirements of the fourth and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Therefore, for reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the record is not clear that the petitioner has established that the beneficiary is qualified to perform services in a specialty occupation. The petitioner has asserted that the beneficiary does qualify under the language of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) -- in that he has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. To support its contention, the petitioner submitted academic equivalency evaluations of the beneficiary's education and work experience from the [REDACTED], a foreign credential evaluation firm located in Miami Beach, Florida. These evaluations conclude that the beneficiary's foreign educational credits equate to two and one half years of undergraduate study at a regionally accredited U.S. university and that, when combined with the beneficiary's six years of work experience, they give the beneficiary the equivalent of a U.S. baccalaureate degree in veterinary science.

While the AAO accepts the [REDACTED]'s evaluation of the beneficiary's education as constituting two and one half years of undergraduate study at a regionally accredited U.S. university, its evaluation of the beneficiary's work experience will not be considered. The Global Education Group's stated expertise is in the evaluation of foreign educational credentials, not in awarding academic credit for overseas work experience. An evaluation service may only evaluate the alien's foreign academic credentials. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As a result, the AAO finds its evaluation of this aspect of the beneficiary's background to be unpersuasive. An evaluation by a credentials evaluation organization serves CIS as an advisory opinion only. Where an evaluation is in any questionable, the AAO may discount it or give it less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Consequently, the evidence submitted by the petitioner does not establish that the beneficiary's combined education and work experience provide him with the equivalent of a U.S. baccalaureate degree in a specialty occupation, thereby qualifying him to perform the duties of that occupation per 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). The AAO further notes that the petitioner has submitted no evidence to establish that the beneficiary it seeks to hire has successfully completed the certification examinations required by the National Board of Examiners and the Florida Veterinary Medical Association's Technician Committee and currently holds the necessary credentials to work as a veterinary technician in Florida.

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.

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