



U.S. Citizenship
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUL 06 2005

IN RE:

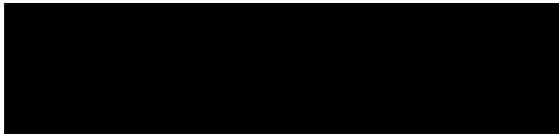
Petitioner:



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 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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter 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. It seeks to employ the beneficiary as a dairy management specialist and endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition stating that the proffered position does not qualify as a specialty occupation. On appeal counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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 the term "specialty occupation" 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:

[A]n 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 are 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 criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a dairy management specialist. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Develop and maintain effective vaccination programs for livestock;
- Develop and maintain effective vaccination programs for calves;
- Perform artificial insemination;
- Maintain the herd's nutrition by developing and following appropriate feed programs;
- Provide immediate attention to any cows with reproductive, lactation or other health problems;
- Schedule and prepare for herd reproductive health on veterinarian check days;
- Perform sampling and moisture testing forages used to feed the herd;
- Ensure that all calves and heifers are fed balanced rations for optimum growth;
- Improve the breeding program's efficiency;
- Maintain semen inventory of qualified bulls within the farm's guidelines;
- Implement appropriate milking, feeding and handling techniques to ensure quality control of all processes affecting the dairy herd;

- Conduct research and design experiments to determine the effects of environmental factors on the quantity and quality of produced dairy;
- Make all relevant management decisions while the owner is away from the business;
- Monitor udder health and dry treatment programs;
- Schedule times to watch for heats;
- Provide hoof care as needed; and
- Perform cost analysis of rations.

The petitioner requires a minimum of a bachelor's degree in animal science, veterinary science, dairy science or a closely related area for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be those noted for farmers, ranchers, and agricultural managers in the *Handbook*. Those occupations are discussed as follows in the *Handbook* as follows:

Farmers and ranchers own and operate mainly family-owned farms. They may also lease land from a landowner and operate it as a working farm. The type of farm they operate determines their specific tasks. On crop farms- farms growing grain, cotton, and other fibers, fruit, and vegetables-farmers are responsible for planning, tilling, planting, fertilizing, cultivating, spraying, and harvesting. After the harvest, they make sure the crops are properly packaged, stored, or marketed. Livestock, dairy, and poultry farmers must feed, plan, and care for the animals and keep barns, pens, coops, and other farm buildings clean and in good condition. They also plan and oversee breeding and marketing activities. Horticultural specialty farmers oversee the production of ornamental plants, nursery products-such as flowers, bulbs, shrubbery, and sod-and fruits and vegetables grown in greenhouses. . . .

. . . .

Farmers and ranchers make many managerial decisions. Farm output is strongly influenced by the weather, disease, fluctuations in prices of domestic and foreign farm products, and Federal farm programs. . . .

The *Handbook* further notes that modern farming requires increasingly complex scientific, business, and financial decisions. Even individuals with substantial experience or who were raised on family farms must acquire appropriate education. Although individuals reared on family farms may adequately perform in some farming operations today with a two-year agricultural degree, a baccalaureate level education is becoming increasingly important. The *Handbook* also notes that a bachelor's degree is important for agricultural managers who were not raised on family farms. In this instance, the beneficiary will manage a farm's commercial dairy herd of 130 cows. His duties are complex and require a knowledge of: farm management techniques; metabolic problems and diseases; animal breeding, reproduction, and problems associated

therewith; animal nutrition; and knowledge of environmental factors affecting the quantity and quality of produced dairy. While a baccalaureate level education may not yet be a standard minimum requirement for entry into the proffered position, such a requirement for the position is a reasonable requirement for the petitioner, and in the industry under the facts of this case, due to the complexity of the duties involved. The position is, therefore, a specialty occupation in that the nature of the position's duties is so specialized and complex that knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The petitioner has established the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The final issue to be discussed is whether the beneficiary is qualified to perform the duties of a specialty occupation. The director did not discuss this issue as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The record indicates that the beneficiary possesses the equivalent of a bachelor's degree in agriculture from an accredited college or university in the United States as determined by [REDACTED] an educational credentials evaluator with Morningside Evaluations and Consulting. A review of the beneficiary's transcripts confirms that he has substantial coursework directly related to the duties of the offered position. As such, the beneficiary is qualified to perform the duties of the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 and the appeal shall accordingly be sustained.

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