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FILE: EAC 03 137 55061 Office: CALIFORNIA SERVICE CENTER Date: OCT 03 2005

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:



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 director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is an animal hospital that seeks to extend the employment of the beneficiary as a training veterinarian (senior veterinary technician). The petitioner, therefore, endeavors to classify the beneficiary 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 because the evidence does not establish that the petitioner engages in a business to employ a specialty occupation position. On appeal, counsel submits a brief and new evidence.

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

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.

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 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 petitioner is seeking the beneficiary's services as a training veterinarian (senior veterinary technician). Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail taking vital signs, performing routine diagnostic tests, administering topical, oral, intramuscular and intravenous medication, drawing blood, taking and reading x-rays, dental procedures, surgical preparation, intubation and anesthesia, surgical assistance, wound dressing and the education of animal owners regarding their pet's health and diet; and occasional supervision of lower level employees. The petitioner indicated that the position requires a bachelor's degree in veterinary technology or its equivalent. The petitioner stated that the State of Connecticut does not require that the training veterinarian have a veterinarian license as they must work under the supervision of a licensed veterinarian.

The director issued a request for additional information showing that the requirement of a baccalaureate degree in a specific specialty or related field is a standard minimum requirement for the job offered. The director requested a detailed description of the proffered position that is on file with the petitioner's human resource office and the description should show the date it was drafted and the minimum education requirements. The director requested a weekly breakdown of the number of hours devoted to each of the beneficiary's proposed duties and explain how many employees the beneficiary is expected to supervise, if any. The director requested a list of individuals who have held the proffered position or currently hold the position. The director indicated that the list should indicate their degree, field of study, date hired by the petitioner, the individual immigration status and a copy of their degree. The director requested evidence that the beneficiary is exempt from licensing requirements to practice as a veterinarian in the state of intended employment.

In response, the petitioner stated "the requirement of a specialized bachelor's degree in animal science or pre-veterinary studies (or equivalent) is a common one for positions in large hospitals with duties similar to our training veterinarian (senior veterinary technician)." The petitioner explained that these positions perform important intermediate duties, below those of a licensed veterinarian but with more responsibility than those of a veterinary assistant or entry-level veterinarian technician. The petitioner added that an associate's degree would be a fairly typical entry-level qualification for a veterinary technician. The petitioner provided advertisements for similar positions and a letter from a competitor indicating a bachelor's degree or higher requirement. The petitioner noted that it currently employed a legal permanent resident training veterinarian (senior veterinary technician) and provided a copy of his translated foreign degree indicating that he has a doctor of veterinary medicine. The petitioner emphasized that the proffered position's duties include advanced tasks such as pre-surgical preparation, dental cleaning, intubation and catheterization, and radiography as well as training and providing work direction for numerous veterinary assistants. The petitioner explained that it is "impossible to give a reliable breakdown of these duties as there is significant variation depending on shift, emergencies to be dealt with, the training needs of new employees, etc." The petitioner provided an organizational chart indicating another employee with the same title as the proffered position.

The director denied the petition and referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) (2002-2003 edition) and noted that the proffered position was similar to that of veterinary

technologist and technicians as described in the “Other Occupations Not Studied in Detail” section. The director noted that the *Handbook* indicated that the most significant source of training for veterinary technologists and technicians was an associate’s degree. The director found that the proffered position was not a specialty occupation.

On appeal, counsel asserts that the proffered position is a specialty occupation and refers to new evidence, the 2004-2005 edition of the *Handbook*. Counsel asserts that the *Handbook* indicated that a four-year veterinary technology degree is the typical qualification for upper-level support positions like the proffered position. Counsel asserts that the proffered position’s key duties, including the administration of anesthesia, intubation and catheterization, reading x-rays, and administering intravenous and intramuscular medications, are complex and have high consequences in case of error; therefore, the position requires a bachelor’s degree in a specific specialty.

The 2004-2005 edition of the *Handbook* devotes a full section to the occupations of veterinary technologist and technician. The *Handbook* reveals that owners of pets and other animals today expect state-of-the-art veterinary care. To provide this service, veterinarians use the skills of veterinary technologists and technicians, who perform many of the same duties for a veterinarian that a nurse would for a physician, including routine laboratory and clinical procedures. Although specific job duties vary by employer, there often is little difference between the tasks done by technicians and by technologists, despite some differences in formal education and training. As a result, most workers in this occupation are called technicians.

The *Handbook* provides examples of duties performing various medical tests along with treating and diagnosing medical conditions and diseases in animals. For example, they may perform laboratory tests such as urinalysis and blood counts, assist with dental prophylaxis, prepare tissue samples, take blood samples, or assist veterinarians in a variety of tests and analyses in which they often utilize various items of medical equipment, such as test tubes and diagnostic equipment. While most of these duties are performed in a laboratory setting, many tasks are not. For example, some veterinary technicians obtain and record patient case histories, expose and develop x-rays, and provide specialized nursing care. The *Handbook* indicates that experienced veterinary technicians may discuss a pet’s condition with its owners and train new clinic personnel.

The *Handbook* states the following about the training and education of veterinary technologists and technicians:

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, in which courses are taught in clinical and laboratory settings using live animals.

Upon review of the record, the AAO finds that the petitioner has established that the proffered position, a training veterinarian/veterinary technologist, is a specialty occupation meeting the criteria 8 C.F.R.

§ 214.2(h)(4)(iii)(A)(4) which requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has established that the beneficiary's duties are more advanced and complex than the duties listed in the *Handbook* for a veterinary technician. The petitioner therefore establishes 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petition may not be granted, however, as the director has not made a determination on whether the beneficiary is qualified for the position under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C). The petitioner asserts that the State of Connecticut does not require licensure or certification for the proffered position.

The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's February 5, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.