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U.S. Citizenship  
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FILE: EAC 04 236 52140 Office: VERMONT SERVICE CENTER Date: **AUG 29 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont Service Center denied the nonimmigrant visa petition. 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 dog boarding, grooming and training business, with four employees. It seeks to employ the beneficiary as a veterinary technologist 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 Form I-129 because he determined the record failed to establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (5) the Form I-290B, with additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

While the issue is outside the scope of this proceeding, the AAO notes that the beneficiary does not appear to be eligible to benefit from the Form I-129 petition filed on her behalf. The Form I-129 indicates that the beneficiary was residing in the United States at the time of filing, although a check of U.S. Citizenship and Immigration Services (CIS) records indicates that her H-3 status in the United States ended on March 29, 2004. Accordingly, she was not in a lawful status at the time the instant petition was filed on August 13, 2004. Pursuant to 8 C.F.R. § 248.1(a), nonimmigrant aliens in the United States may change to another nonimmigrant status only if they are in lawful status. Moreover, as noted by the director in his denial, the record does not establish that beneficiary has complied with the regulation at 8 C.F.R. § 214.2(h)(13)(iv), which requires that an individual who has spent two years in the United States as an H-3 trainee be physically present outside the United States for the six month period preceding his or her readmission under section 101(a)(15)(H) of the Act. As previously noted, the Form I-129 indicates that the beneficiary has continued to reside in the United States.

The AAO now turns to the issue before it – whether the 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 (5<sup>th</sup> 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 technologist, but does not state that the proffered position would require the minimum of a baccalaureate degree in a specific specialty. Evidence of the beneficiary’s duties includes: the Form I-129 and a list of duties appended to the petition. As described, the duties of the proffered position would require the beneficiary to:

- Develop an individualized, advanced canine training program, applying the basic principles of the psychology, anatomy and physiology of animals;
- Review the objectives of the training regimen in light of the subject’s physical and emotional capacities, as well as receptiveness to positive reinforcement;
- Assess the potential of the subject, reviewing the symptoms, causes and treatment of common animal ailments;
- Administer, as needed, the frequently prescribed medications for animals, as determined by a qualified veterinarian;
- Act as a liaison with the petitioner’s clients;
- Undertake responsibility for the implementation of a rigorous training program in accordance with a specialized methodology; and

- Assist with the administrative functions associated with the smooth day-to-day functioning of the enterprise.

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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As the petitioner contends that the proffered position is that of a veterinary technologist, the AAO turns first to the 2006-2007 edition of the *Handbook* for its discussion of the occupation, which states:

Veterinary technologists and technicians typically conduct clinical work in a private practice under the supervision of a veterinarian – often 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. [*Handbook* at 341]

In light of the above description, the AAO does not find the duties outlined by the petitioner to be those of a veterinary technologist. Instead, it concludes they are more closely aligned to those performed by animal care and service workers who:

Train, feed, water, groom, bathe and exercise animals, and clean, disinfect, and repair their cages. They also . . . observe behavioral changes that could indicate illness or injury. Boarding kennels . . . employ animal care and service workers. Job titles and duties vary by employment setting.

*Kennel attendants* . . . may provide basic animal healthcare . . . .

Animal caretakers in animal shelters perform a variety of duties . . . . In addition to attending to the basic needs of the animals, caretakers also must keep records of the animals received and discharged and any tests or treatments done. Some vaccinate newly admitted animals under the direction of a veterinarian or veterinary technician, and euthanize . . . animals. Animal caretakers in animal shelters also interact with the public . . . .

*Animal trainers* train animals for riding, security, performance, obedience, or assisting persons with disabilities. Animal trainers do this by accustoming the animal to human voice and tact, and conditioning the animal to respond to commands. Trainers use several techniques to help them train animals . . . . Animal training takes place in small steps, and often takes months and even years of repetition . . . . In addition to their hands-on-work with the animals, trainers often oversee other aspects of the animal's care, such as diet preparation . . . . [*Handbook* at 385]

Accordingly, the proffered position, which would require the beneficiary to develop and conduct canine training programs, administer medications under the director of a veterinarian and serve as the petitioner's liaison with its clients, is that of an animal caretaker/trainer.

To determine the preparation required for such employment the AAO again turns to the *Handbook*, which states that “[m]ost animal care and service workers are trained on the job.” While it also indicates that “some training programs are available for specific types of animal caretakers” and that “some animal training jobs may require a bachelor's degree and additional skills,” it does not report that a degree in a directly-related specialty is normally required of individuals who seek entry-level employment as animal caretakers or trainers. Accordingly, the proffered position is not established as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(A)(2), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. On appeal, counsel submits letters from three individuals who indicate they are professional dog trainers. Two of these individuals state that dog trainers commonly hold a baccalaureate degree in animal behavior or its equivalent. The two opinions are not, however, sufficient to establish that the petitioner's degree requirement is the norm within its industry. They offer no evidence to establish that their organizations' operations are similar to those conducted by the petitioner, a dog boarding and training business, or that the training duties for which they indicate a degree is required are parallel to those that would be performed by the beneficiary. One individual indicates that he is involved in behavior modification training; the other states only that he has a kennel and training facility. Neither writer provides a specific description of the training duties they perform.

The letters also fail to establish the proffered position as a specialty occupation based on its complexity or unique nature under the criterion's second prong. Although both writers offer the opinion that the proffered position would require a degree, they do not indicate that they have reviewed the duties of the proffered position. Therefore, the writers provide no factual basis that would support their respective opinions. The AAO may, in its discretion, use as advisory opinions, statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not

required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

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 the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually 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. The petitioner has not, however, attempted to establish the proffered position as a specialty occupation based on its normal hiring practices. Accordingly, the record does not demonstrate that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to prove that the nature of the proffered position’s duties is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. A review of the record does not, however, find it to demonstrate that the duties of the proffered position would require the beneficiary to have greater knowledge or skill than that typically possessed by an animal caretaker/trainer, employment that the *Handbook* reports does not normally impose a degree requirement. Neither does it establish that the position would require the beneficiary to have skills beyond those of an animal caretaker/trainer. Although the AAO notes the opinions offered in the two letters submitted on appeal, they fail to establish the duties of the proffered position as a specialty occupation under this final criterion. In that the writers do not indicate they have reviewed the duties of the proffered position, the AAO will not consider their opinions regarding the position’s degree requirement. *Matter of Caron International*. Moreover, as previously indicated, the record does not offer any statement from the petitioner to establish that it requires the minimum of a baccalaureate degree in a directly related field to perform the duties of the proffered position. Absent such a requirement, the petitioner may not establish that the duties of the proffered position establish it as a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Beyond the decision of the director, the AAO does not find the record to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

In determining whether an alien is qualified to perform the duties of a specialty occupation, Citizenship and Immigration Services (CIS) looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have 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 have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

To establish the beneficiary's qualifications to perform the duties of the proffered position, the petitioner has submitted copies of a certificate documenting her employment as a veterinary nurse in Japan from October 1995 to October 1997, a sworn statement from the beneficiary describing the duties she performed during this period and the three letters submitted on appeal, each of which indicates that the writer finds the beneficiary to be qualified to perform the duties of the proffered position. In that the petitioner has provided no evidence related to the beneficiary's academic credentials and the proffered position does not require licensing or certification, the petitioner must establish that the beneficiary's prior employment provides her with the equivalent of a baccalaureate degree in a field related to the proffered position under the fourth and final criterion.

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), equivalence to a U.S. baccalaureate or higher degree shall mean the achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty, and shall be determined by one or more of the following requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The documentation submitted by the petitioner does not respond to any of the first four criteria. Accordingly, the AAO has conducted its own evaluation of the beneficiary's qualifications under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. The record must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, that this experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation and that the beneficiary's expertise in the specialty has been recognized, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The documentation of the beneficiary's qualifications by the petitioner fails to meet the requirements just noted. The two years of documented employment are the equivalent of less than one year of college training. Moreover, the petitioner has submitted no evidence that demonstrates that the beneficiary's experience included the theoretical and practical application of specialized knowledge, was gained while working with degreed individuals or that her expertise in the field has been recognized in one of the ways indicated above. Although the AAO notes that the dog trainers who submitted letters on behalf of the beneficiary have significant experience in their field, the record does not establish them as "recognized authorities." By regulation, an opinion submitted by a recognized authority must state: the writer's qualifications as an expert; the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; how the conclusions were reached; and the basis for the conclusions supported by copies or citations of any research material used. *See* 8 C.F.R. § 214.2(h)(4)(ii). Accordingly, the petitioner has failed to establish the beneficiary's qualifications to perform the duties of a specialty

occupation under any of the alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C). For this reason as well, the petition will be denied.

For the reasons discussed above, the record fails to establish that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

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 met that burden.

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