

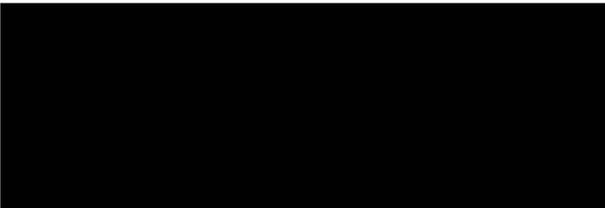
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U.S. Citizenship
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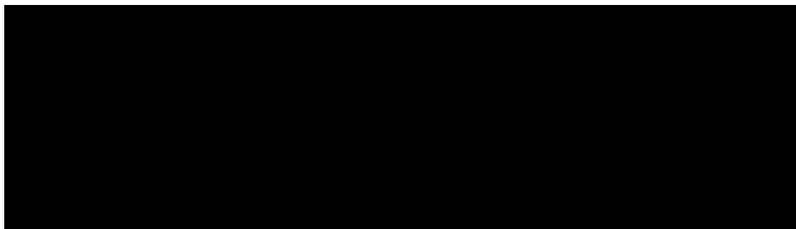
D2

FILE: LIN 04 094 52182 Office: NEBRASKA SERVICE CENTER Date: MAR 28 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, 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 appeal will be dismissed. The petition will be denied.

The petitioner provides horse breeding, training, and sales. It seeks to employ the beneficiary as an animal scientist. 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 beneficiary is not qualified to perform the proffered position. On appeal, counsel submits a brief and additional evidence.

The record of proceeding before the AAO contains, in part: (1) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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 meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) states that equating the beneficiary's credentials to a U.S. baccalaureate or higher degree shall be determined by one or more of the following:

- (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; or
- (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 petitioner is seeking the beneficiary's services as an animal scientist. The director found that the beneficiary is not qualified for the proffered position because the beneficiary's education, experience, and training are not equivalent to a baccalaureate degree in a field that is directly related to the proposed position.¹ On appeal, counsel refers to Professor [REDACTED] revised educational evaluation to establish the beneficiary's qualifications for the proposed position.

Upon review of the record, the petitioner has not established that the beneficiary is qualified to perform the proffered position.

¹ The director noted for the record that he was not persuaded that the proposed position qualifies as a specialty occupation. Based on the proposed job description, the AAO finds the proposed duties are specialized and complex, requiring a baccalaureate degree in a relevant field such as the animal sciences. Thus, the petitioner established the proposed position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The AAO notes that the proposed duties parallel those of an animal breeder as that occupation is depicted in the *Handbook*, and that the *Handbook* conveys that the animal sciences is a relevant academic field for an animal breeder.

The petitioner does not establish the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) or (2). The beneficiary does not hold a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university, or a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university. The petitioner must therefore demonstrate that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a U.S. baccalaureate or higher degree shall be determined by one or more of the following:

- (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; or
- (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.

To establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), counsel references Professor ██████████ evaluation. This evidence is not persuasive, however, as no independent evidence in the record reflects that Professor Neibergs qualifies as an official according to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

No evidence in the record satisfies the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2), (3), or (4).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent

in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation²;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Based on the evidence in the record, the AAO finds that the beneficiary's academic coursework and work experience are insufficient to qualify him for the proposed position.

With respect to the beneficiary's education and training, the record contains evidence of the beneficiary's transcripts, diploma, certificate, and translations of documents into the English language. According to Professor [REDACTED], the beneficiary completed one year of academic coursework at Mount Saint Vincent University in Canada, and one year of coursework at Dalhousie University in Canada. The beneficiary completed coursework leading to a diploma in June 2001 in Horse Husbandry, including Stable Management, from Deutsche Reitshule in the Nordrhein-Westfaelischen. On appeal, counsel states that the record contains information about the length of coursework at the Deutsche Reitschule College; however, the AAO finds that this evidence does not clearly specify the length of the beneficiary's coursework. The attachment to the diploma reflects in Part II, Theoretical Test, the title of the coursework and the scores received; but it does not show the length of each course. The document entitled "Pferdewirt" provides a summary for areas of expertise; nevertheless, it is unclear as to how the document relates to the beneficiary's diploma. The beneficiary also received a certificate for completing the "Riding" course Chief program at Westfalisher Reit-und Fabrveteine in December 2003.

With regard to the beneficiary's work experience, the submitted letters from prior employers indicate that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, which in this case is animal science. Each of the prior employers, [REDACTED]

² *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

Farm (June 1, 2003 to February 7, 2004), [REDACTED] (January 11, 1999 to November 30, 2001), [REDACTED] (August 1, 1999 to October 15, 1999), and [REDACTED] (December 1, 1997 to July 30, 1998) describe the beneficiary as involved in preparing horses for breeding including assisting the veterinarian with semen collection and artificial insemination. The petitioner submitted a letter from a veterinarian attesting to the beneficiary's assistance at the "on-site stallion and insemination station during all veterinary tasks" while employed by [REDACTED]. The Colorado Veterinary Practice Act conveys that a licensed veterinarian is required for the practice of artificial insemination or ova transplantation of animal species.³ The beneficiary's resume indicates that he was self-employed from January 1, 2002 to June 30, 2002; however, none of the evidence in the record relates to the period of self-employment. As such, no evidence establishes the nature of the beneficiary's duties while self-employed.

Together, the evidence of education and work experience is insufficient to demonstrate that the beneficiary's education and work experience qualify him for the proposed position. The beneficiary completed two years of college education; the length of study relating to the diploma is unclear. The regulation requires the petitioner to establish three years of specialized training and/or work experience for each year of college-level training the beneficiary lacks. Here, the petitioner needs to establish six years of work experience or training. The petitioner substantiated through documentary evidence four years and seven months of work experience; again, the period associated with self-employment is not supported by independent evidence. Consequently, based on the evidence in the record, the AAO finds that the petitioner fails to establish the beneficiary's qualifications for the proposed position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states that the alien's experience must have been gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and the alien must have recognition of expertise in the specialty by at least two recognized authorities in the same specialty occupation. The beneficiary's experience was gained while working with veterinarians. However, the beneficiary does not have recognition of expertise in the specialty (animal science) by at least two recognized authorities in the same occupation. The AAO notes that Professor [REDACTED] does not qualify as a recognized authority in the field of animal science as his resume reflects recognition in equine business.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall 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 sustained that burden.

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

³ "Artificial insemination" is defined in the Colorado Veterinary Practice Act in 12-64-103(3), and license requirements and exceptions are set forth in 12-64-104.