

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



*Dz*

FILE: EAC 04 236 52140 Office: VERMONT SERVICE CENTER Date: **NOV 20 2007**

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*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The AAO's previous decision will be affirmed. The petition will be denied.

The petitioner is a dog boarding, grooming, and training business that seeks to employ the beneficiary as an accountant-auditor. 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, filed on August 13, 2004; (2) the director's denial, dated March 2, 2005; (3) the Form I-290B and supporting documentation, filed on March 31, 2005; (4) the AAO's August 29, 2006 dismissal of the appeal; and (5) the petitioner's motion to reopen or reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The petition was initially denied on the basis of the director's determination that the petitioner had not established that its proposed position qualifies for classification as a specialty occupation. In its dismissal of the appeal, the AAO agreed with the director's determination that the proposed position does not qualify for classification as a specialty occupation, and found that, beyond the decision of the director, the petitioner had also failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.

On motion, counsel submits three letters. In his September 28, 2006 cover letter, counsel states that this evidence "squarely addresses the issues which the decision raised." Counsel states that "[i]t is established that the prior incumbents in the subject position all possessed baccalaureate degrees" and that it "concludes unequivocally that the beneficiary's education, training[,] and experience constitute the equivalent of a US master[']s degree."

In an undated letter, [REDACTED], an attorney familiar with H-1B visa requirements, states his opinion that "[i]t is feasible that the petitioner would require a degree or equivalent for the subject position since the petitioner is a highly successful organization whose affluent patrons are quite demanding . . ." [REDACTED] states that many of the dogs are imported from Europe; that the petitioner provides dogs with specialized training to law enforcement agencies and companies; that monitoring of the dogs is of paramount importance; that having a veterinary technologist with a keen eye and understanding obtained through years of progressive responsibility would inure to the petitioner's benefit; that he is not privy to the petitioner's organizational chart; and that the job responsibilities mentioned by the petitioner can only be done by an individual who understands the nature of working dogs and the highly specialized training involved.

The AAO finds that an inadequate factual foundation to support [REDACTED] opinion has been established. He does not note the location or size of the petitioner, nor indicate whether he reviewed company information about the petitioner, visited its site, reviewed the job duties of any individuals working in positions similar to the position proposed here, or interviewed anyone affiliated with the petitioner. Nor does he describe the duties of the proposed position in any detail (he lists several duties of the proposed position in one sentence of his letter); rather, he discusses the petitioner's clientele, which does not lend additional insight into the beneficiary's actual job duties. The extent of his knowledge of the proposed position is, therefore, not established. Thus, the petitioner has not established the reliability

and accuracy of [REDACTED] pronouncements and the submission is therefore not probative of any of the specialty occupation criteria. He references the duties of a veterinary technologist but, as noted by the AAO in its August 29, 2006 decision, the duties of the proposed position are not those of a veterinary technologist, and [REDACTED] offers no rebuttal to any of the points raised by the AAO in that decision. The AAO may, in its discretion, use as advisory opinion 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 finds that [REDACTED] letter fails to establish the proposed position as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In his undated letter, [REDACTED] the petitioner's president, states that all of the previous employees who have previously held the position possessed a bachelor's degree, and provides the names of four individuals. However, [REDACTED] has not included evidence that these individuals actually worked for the petitioner, nor did he provide copies of those individuals' diplomas. Without such information, the AAO is unable to determine whether those individuals actually worked for the petitioner, whether they actually have bachelor's degrees, and whether those bachelor's degrees were in a specific field of study. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the AAO finds that Mr. Aportela's letter fails to establish the proposed position as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Accordingly, the AAO finds that the petitioner has failed to overcome the AAO's earlier finding that the petitioner has failed to demonstrate that the proposed position qualifies for classification as a specialty occupation.

[REDACTED] letter also addresses the AAO's second finding—that the petitioner failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. [REDACTED] states that the petitioner's level of awareness and knowledge of the field, both theoretical and practical, demonstrates that her educational credentials are equivalent to a bachelor's degree in animal sciences.

In his September 28, 2006 letter, [REDACTED], a professional dog trainer, reaches the same conclusion as the petitioner: that the beneficiary's combined education and experience are equivalent to a bachelor's degree in animal sciences.

The requirements for equating an individual's combined education and experience to a bachelor's degree from an accredited American institution of higher education were specifically set forth in the AAO's August 29, 2006 dismissal. Neither [REDACTED] letter nor [REDACTED] letter conform to these requirements, as the petitioner has not established that either of these individuals have the authority to grant college-level credit for training and/or experience in animal sciences at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

Accordingly, the AAO finds that the petitioner has failed to overcome the AAO's earlier finding that the petitioner has failed to demonstrate that the beneficiary qualifies to perform the duties of a specialty occupation.

The petitioner has failed to overcome either ground of the AAO's August 29, 2006 decision. Accordingly, the AAO will affirm that decision.

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 AAO's August 29, 2006 decision is affirmed. The petition is denied.