

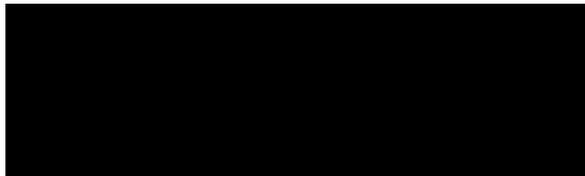
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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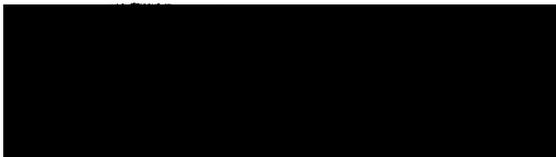
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FILE: WAC 04 041 52871 Office: CALIFORNIA SERVICE CENTER Date: AUG 18 2005

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 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 dismissed. The petition will be denied.

The petitioner is a veterinary clinic/hospital that seeks to employ the beneficiary as a veterinary medicine research associate. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a veterinary medicine research associate. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 7, 2003 letter in support of the

petition; and the petitioner's response to the director's request for evidence. According to the petitioner's November 7, 2003 letter, the beneficiary would perform duties that entail:

1. Review major professional journals for animal health issues and developments of relevance to the practice of veterinary medicine, and of particular significance to the clinic's cases;
2. Elicit detailed case histories, discuss with the veterinarian case charts and files, and research literature to find research suggestions and modes of treatment and protocols for possible diagnosis;
3. Provide veterinarian with latest information from medical literature;
4. Plan, organize and conduct research in the field of veterinary medicine and animal care;
5. Develop and implement policies and procedures for documenting, storing and retrieving information, and for processing legal documents and correspondence requests;
6. Conduct conventional research in universities, research facilities and institutions, and local libraries;
7. Conduct research on the internet, where the latest literature and jurisprudence are available;
8. Submit periodic reports to veterinarian regarding status of the clinic's research activities;
9. Provide research support to the veterinarian for case study presentations and publications; and
10. Perform other functions as may be relevant to the job.

The petitioner indicated that a qualified candidate for the job would possess a Doctor of Veterinary Medicine (DVM) degree or an equivalent thereof.

The director found that the proffered position, which is similar to medical/research assistant, secretary, and administrative assistant jobs, was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate degree. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a veterinary medicine research associate, which is not among the occupations covered by the *Handbook*. Counsel states further that the job of a veterinary medicine research associate is more complex than that of a research assistant, and is unrelated to medical assistant, secretary, and administrative assistant jobs. Counsel states further that the proffered position is similar to a medical scientist and an animal scientist, positions that require the analysis and interpretation of scientific data. Counsel cites unpublished decisions and submits job postings, letters from various veterinarians with practices, and an academic opinion as supporting documentation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first 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; 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 often considered by CIS when determining these criteria include: whether the *Handbook* reports that 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is similar to a medical scientist and an animal scientist. According to the *Handbook*, 2004-2005 edition, medical scientists work in research and development. Basic medical research provides the building blocks necessary to develop solutions to human health problems. Whatever the branch of science involved, and no matter what the setting for the research may be, it appears that the main focus of such researchers is on finding solutions to very specific problems, or answers to very specific questions. The solutions or answers they seek, however, have a broad application rather than an individual scope. The goals of medical researchers are not the same as those of veterinary medicine research associates, who "review major professional journals for animal health issues and developments of relevance to the practice of veterinary medicine, and of particular significance to the clinic's cases." Likewise, the goals of animal scientists also have a broad application rather than an individual scope. Some may study genetics, nutrition, reproduction, growth, and development of domestic farm animals, while others may work as extension agents or consultants to agricultural producers.

In this case, the specific nature of and the scope of the proposed veterinary medicine research have not been defined. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The proposed duties of the proffered position, which include "research[ing] literature to find research suggestions and modes of treatment and protocols for possible diagnosis", appear to be focused on individual diagnosis and care. This is not the type of research contemplated by the *Handbook* in reference to medical scientist/animal scientist positions. In this case, the proposed duties include "[d]evelop[ing] and implement[ing] policies and procedures for documenting, storing and retrieving information, and for processing legal documents and correspondence requests", in addition to performing research activities. A review of the Administrative Assistant job description in the *Handbook*, 2004-2005 edition, at pages 469-470, confirms the accuracy of the director's assessment to the effect that, the job duties parallel those responsibilities of an administrative assistant. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for an administrative assistant job.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for research-related positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The

advertisements are for research-related positions in the human health care industry. The petitioner's industry, however, is not represented. Thus, the advertisements have no relevance.

The record also contains letters from various veterinarians with practices, as well as an opinion from a university professor, who assert, in part, that positions such as the proffered position require a doctor of veterinary medicine degree or an equivalent thereof. The writers, however, do not provide any evidence in support of their assertions. 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)).

As counsel also cites unpublished AAO decisions, asserting that the AAO has determined that similar cases qualified as a specialty occupation, it is worth emphasizing that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Upon review of counsel's discussion of the cited decisions, however, it does not appear that such decisions represent the petitioner's industry. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As information in the record indicates that the proffered position is newly created, the petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.