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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: LIN 03 273 54541 Office: NEBRASKA SERVICE CENTER Date: DEC 02 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

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 hospital that seeks to employ the beneficiary as a veterinary technical controller. The petitioner 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 proffered position does not qualify as a specialty occupation. On appeal the petitioner asserts that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> [A]n 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 are 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) the 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) the Form I-290B with 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 technical controller. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: control the medical and laboratory sections of an animal veterinarian hospital; operate lab equipment; maintain laboratory logs; perform blood and sample collections; and be responsible for quality control of clinical systems and the smooth flow of hospital operations and systems. The petitioner requires a minimum of a bachelor's degree in veterinary science for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for veterinary technologists and technicians with some additional management and/or administrative responsibilities. Although specific duties will vary by employer, there is little difference between the tasks done by technicians and by technologists. As a result, most workers in the occupation are called technicians. The *Handbook* notes that there are primarily two levels of education and training for entry into this occupation – a two-year program for veterinary technicians and a four-year program for veterinary technologists. Most entry-level technicians have a two year degree, usually an associate degree from an accredited community college program in veterinary technology. A few colleges offer veterinary technology programs that are longer and may culminate in a four-year bachelor's degree in veterinary technology. The *Handbook* is clear, however, that a bachelor's degree in a specific specialty is not the minimum requirement for entry into the offered position. Most positions are filled by those holding an associate degree. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)*(2)*. In support of that assertion the petitioner submitted: copies of three job advertisements; information from Northern Virginia Community College about careers in veterinary technology; and labor market information about veterinary technicians from the California Employment Development Department. The job advertisements provided are of little evidentiary value as they are not from organizations similar to that of the petitioner. Two of the advertisements are from research

facilities, and the third is from Yale University. The petitioner is a small animal veterinarian hospital. The advertisements are not, therefore, for parallel positions among similar organizations. The information from Northern Virginia Community College indicates simply that while many veterinary technology programs are two years in length and associated with community colleges, there are six programs that offer a bachelor's degree in veterinary technology. The community college documentation does not establish that a degree requirement is common to the industry in parallel positions among similar organizations, and offers no evidence in that regard. Finally, the information provided by the California Employment Development Department indicates that veterinary technicians may obtain certification/registration in several different manners. In order to qualify for the certification/registration examination, most qualify by graduating from an approved school. There is no requirement, however, that the education obtained be at a baccalaureate level. A certificate program usually takes one year to complete and is offered by some private schools and community colleges. A two-year degree program is available in many community colleges. Both of these educational tracks qualify a technician to take the certification/registration examination in states that require certification/registration. Eligibility categories also exist for certification by individuals who qualify through practical on-the-job training. The information provided by the petitioner does not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner has not established that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) and (*4*). The duties are routinely performed by veterinary technologists and technicians in the industry. The fact that the beneficiary may have some supervisory and/or quality control responsibilities does not raise the complexity of the duties to that of a specialty occupation requiring a baccalaureate level education in a specific specialty.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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