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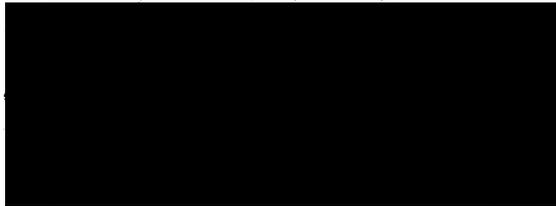
U.S. Department of Homeland Security
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U.S. Citizenship
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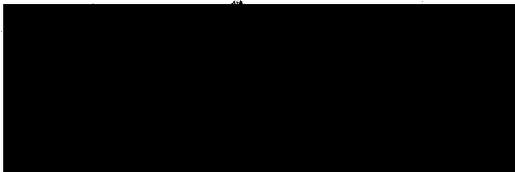


FILE: WAC 04 063 52780 Office: CALIFORNIA SERVICE CENTER Date: OCT 31 2005

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 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 sustained. The petition will be approved.

The petitioner is a cattle feeding operation that seeks to employ the beneficiary as an artificial insemination technician. 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 proffered position is not a specialty occupation. On appeal, counsel states that the proposed position is a specialty occupation.

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 an artificial insemination technician. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail estrus detection and artificial insemination of dairy heifers, record keeping, weighing and vaccinating animals, and providing daily general care. The petitioner requires a bachelor's degree in animal science for the proposed position.

The director stated that the proposed position resembles that of a veterinary technologist and technician as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that those occupations do not require a bachelor's degree in a specific specialty.

On appeal, counsel states that the proposed position is different from a veterinary technologist and technician, and is akin to an animal scientist as that occupation is depicted in the *Handbook* and the *Occupational Information Network* (the *O*Net*). Counsel asserts that the *Handbook* depicts employers as requiring a bachelor's degree for an animal scientist, and a veterinary technologist as having a four-year degree program. Counsel states that the submitted article from the *Western Dairy Business* discusses the petitioner's business. Counsel describes the proposed duties of a supervisor of breeding (previously titled the artificial insemination technician). Counsel emphasizes that over a ten-year period the petitioner employed eight persons as artificial insemination technicians, and that each person held at least a bachelor's degree. Counsel states the beneficiary qualifies for the proposed position.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that 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. The proposed duties reflect a specialization and complexity that would require the services of a person with a baccalaureate degree in animal science. As such, the petitioner establishes the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The record reflects that the beneficiary obtained a Master of Science in Animal and Range Sciences from the Montana State University -- Bozeman. The beneficiary is thus qualified to perform the services of the specialty occupation.

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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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.