

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



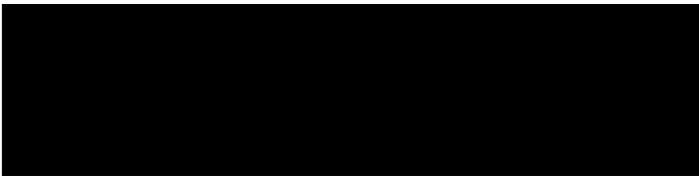
12

FILE: SRC 04 235 51199 Office: TEXAS SERVICE CENTER Date: **SEP 07 2006**

IN RE: Petitioner: 
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:



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.

for Michael T. Kelly
Robert P. Wiemann, Chief
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 The director's decision will be withdrawn and the petition remanded for entry of a new decision.

The petitioner is a veterinary clinic that seeks to employ the beneficiary as a veterinary assistant. 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. Counsel submitted a timely appeal.

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 the appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a veterinary assistant. 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 preparing the treatment rooms for examination; administering injections, medications, and intravenous fluid therapy; intensive care to equine neonates and adults; assist veterinarian during surgeries and artificial inseminations; perform routine laboratory tests; care for and feed laboratory animals; and assist professional personnel with research projects in commercial, public health and/or research laboratories. The petitioner requires a bachelor's degree, or its equivalent, in veterinary doctor and zoo-technician.

In denying the petition, the director stated that the proposed duties resemble those of a veterinary technician as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* indicates that a veterinary technician does not require a baccalaureate degree in a specific specialty.

On appeal, counsel amplifies the proposed duties and states that the petitioner's practice involves treating horses for breeding purposes such as for racing. According to counsel, the proposed position is more advanced than that of a veterinary technologist.

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.

The AAO finds that the petitioner has established that the offered position qualifies as a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that the petitioner demonstrate that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Here, as described by the petitioner, the proposed duties parallel those of a veterinary technologist, which the *Handbook* explains requires the completion of a 4-year program. Thus, the offered position qualifies as a specialty occupation. The *Handbook* further states the following regarding the employment requirements of this occupation:

Each State regulates veterinary technicians and technologists differently; however, all States require them to pass a credentialing exam following coursework. Passing the State exam assures the public that the technician or technologist has sufficient knowledge to work in a veterinary clinic or hospital. Candidates are tested for competency through an examination that includes oral, written, and practical portions and that is regulated by the State Board of Veterinary Examiners or the appropriate State agency. Depending on the State, candidates may become registered, licensed, or certified. Most States, however, use the National Veterinary Technician (NVT) exam. Prospects usually can have their passing scores transferred from one State to another, so long as both States utilize the same exam.

The evidence of record indicates that the beneficiary received the Doctor of Veterinary Medicine from a university in Mexico, and the Foreign Credentials Service of America determined that his degree is the equivalent of a bachelor of veterinary medicine as awarded by a university in the United States accredited by one of the six regional accrediting associations. The record contains the beneficiary's transcript and degree. Nevertheless, the AAO finds that the petition may not be approved at this time as the evidence contained in the record does not demonstrate that the beneficiary passed a credentialing exam, which the *Handbook* indicates is a requirement of all states. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the offered position, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's May 5, 2005 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.