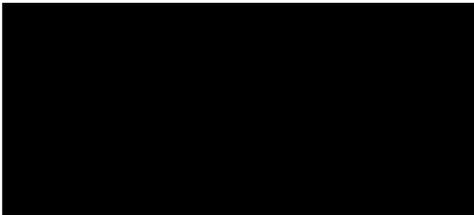




U.S. Citizenship  
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APR 05 2007

FILE: LIN 05 220 52216 Office: NEBRASKA SERVICE CENTER Date:

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.

Robert P. Wiemann, Chief  
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 sustained. The petition will be approved.

The petitioner is a dairy farm and beef production operation. It seeks to employ the beneficiary as an agricultural technologist and endeavors to classify her 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 stating that the proffered position does not qualify as a specialty occupation. On appeal counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first 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)(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.

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

The petitioner is seeking the beneficiary's services as an agricultural technologist. 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:

- Study nutrition, growth and development of domestic farm animals through observing food intake and development to determine optimum level of nutrients;
- Utilize animal husbandry theory and technique to produce the best livestock in future generations;
- Observe sanitary conditions in barns to prevent the spread of diseases and advise workers on proper animal hygiene procedures;
- Research crops and nutrients to determine the diet and food intake schedule in order to increase milk productivity;
- Develop a nutritious and healthy diet for cows using the crops grown at the farm;
- Observe cows during pregnancy, assist animals during delivery, and oversee and ensure the healthy growth of calves; and
- Improve efficiency on the farm through observation and implementation of problem solving techniques.

The petitioner requires a minimum of a bachelor's degree in agriculture, animal science or a closely related area for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. 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 appear to be a combination of the duties of animal or agricultural scientists and farmers, ranchers, and agricultural managers in the *Handbook*. Those occupations are discussed as follows in the *Handbook* as follows:

*Animal scientists* work to develop better, more efficient ways of producing and processing meat, poultry, eggs, and milk. Dairy scientists, poultry scientists, animal breeders, and other scientists in related fields study the genetics, nutrition, reproduction, growth, and development of domestic farm animals. Some animal scientists inspect and grade livestock food products, purchase livestock, or work in technical sales or marketing. As extension agents or consultants, animal scientists advise agricultural producers on how to upgrade animal housing facilities properly, lower mortality rates, handle waste matter, or increase production of animal products, such as milk or eggs.

*Farmers and ranchers* own and operate mainly family-owned farms. They may also lease land from a landowner and operate it as a working farm. The type of farm they operate determines their specific tasks. On crop farms- farms growing grain, cotton, and other fibers, fruit, and vegetables-farmers are responsible for planning, tilling, planting, fertilizing, cultivating, spraying, and harvesting. After the harvest, they make sure the crops are properly packaged, stored, or marketed. Livestock, dairy, and poultry farmers must feed, plan, and care for the animals and keep barns, pens, coops, and other farm buildings clean and in good condition. They also plan and oversee breeding and marketing activities. Horticultural specialty farmers oversee the production of ornamental plants, nursery products-such as flowers, bulbs, shrubbery, and sod-and fruits and vegetables grown in greenhouses. . . .

. . . .

Farmers and ranchers make many managerial decisions. Farm output is strongly influenced by the weather, disease, fluctuations in prices of domestic and foreign farm products, and Federal farm programs. . . .

The *Handbook* further notes that modern farming requires increasingly complex scientific, business, and financial decisions. Even individuals with substantial experience or who were raised on family farms must acquire appropriate education. Although individuals reared on family farms may adequately perform in some farming operations today with a two-year agricultural degree, a baccalaureate level education is becoming increasingly important. The *Handbook* also notes that a bachelor's degree is important for agricultural managers who were not raised on family farms. In this instance, the beneficiary will assist in management of a farming operations commercial herd of 220 cows and calves, as well as 400 acres of annual crop production. Her duties are complex and require a knowledge of: farm management techniques; metabolic problems and diseases; animal breeding, reproduction, and problems associated therewith; animal nutrition; and knowledge of environmental and nutritional factors affecting the quantity and quality of produced livestock and dairy products. A baccalaureate level education is not a standard minimum requirement for entry into a farmer or rancher position. Training requirements for agricultural scientists depend on their specialty and the type of work they perform. A bachelor's degree in agricultural science is sufficient for some jobs in applied research. Other jobs require a master's or doctorate degree in a related field. The work of animal scientists requires a minimum of a bachelor's degree in a specific specialty. The position is, therefore, a specialty occupation under the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The final issue to be discussed is whether the beneficiary is qualified to perform the duties of a specialty occupation. The director noted the beneficiary's educational background and stated that her education qualified her to perform the duties of a specialty occupation. The director did not, however, specifically determine whether the beneficiary was qualified to perform the duties of the proffered position as it was determined that the position did not qualify as a specialty occupation. The record is sufficient, however, for the AAO to make that determination. The record indicates that the beneficiary possesses the equivalent of a master's degree in engineering technology with a major in zootechnology from an accredited college or university in the United States as determined by [REDACTED], an educational credentials evaluator with A & M Logos International, Inc. A review of the beneficiary's transcripts confirms that she has substantial coursework directly related to the duties of the offered position. As such, the beneficiary is qualified to perform the duties of the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 and the appeal shall accordingly be sustained.

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