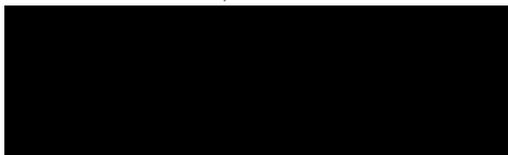




U.S. Citizenship  
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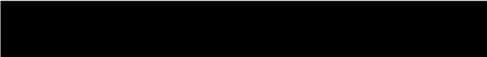
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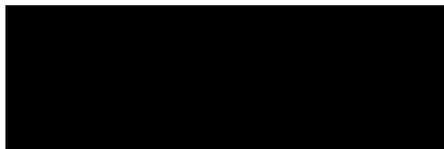
D2

FILE: EAC 06 035 50351 Office: VERMONT SERVICE CENTER Date: **DEC 20 2007**

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 Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's July 14, 2006 decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner provides veterinary services. It seeks to employ the beneficiary as a veterinary technologist. Accordingly, 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).

On July 14, 2006, the director denied the petition determining that the record did not establish that the beneficiary had passed the required exam or is licensed to perform the duties of the position in Massachusetts.

The record of proceeding before the AAO contains: (1) the Form I-129 filed November 10, 2005; (2) the director's February 21, 2006 request for further evidence (RFE); (3) counsel for the petitioner's March 29, 2006 response to the RFE; (4) the July 14, 2006 denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The director identified the issue in this matter as whether the petitioner had established that the beneficiary is qualified to perform the duties of 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)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or

university;

- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner indicated on the Form I-129 that the proffered position was titled veterinary technologist and that the position involved providing animal care. In addition to the Form I-129, the petitioner provided the Department of Labor's (DOL) Labor Condition Application (LCA) also indicating that the proffered position was for a veterinary technologist. The record also included a copy of the Form I-797A, Approval Notice, approving the beneficiary's H-1B classification for another petitioner.

On February 21, 2006, the director requested, among other things: a detailed statement setting forth the beneficiary's proposed duties and responsibilities and how the beneficiary's education related to the position; and, evidence that the beneficiary had the appropriate license to perform the duties of the position or that no license was required. In a March 28, 2006 attachment to counsel's March 29, 2006 response, the petitioner indicated that the proffered position was for a veterinary technologist, a position so complex that it required at least a baccalaureate of science degree to fulfill the duties of the position. The petitioner stated:

In her capacity as a veterinary technologist, [the beneficiary] will plan and execute medical tests for use in the treatment and diagnosis of diseases in animals; prepare and administer medications, vaccines and treatments; prepare animals for surgery; care for and monitor the condition of animals recovering from surgery; administer anesthesia; and perform other highly specialized tasks which will require her education in the field of veterinary medicine.

The petitioner also referenced an excerpt from the Purdue University School of Veterinary Medicine Website that listed the differences in duties, scope, and educational requirements among various careers in veterinary medicine. The list included two careers pertinent to this matter, the position of veterinary technician and the position of veterinary technologist. The website identified the position of veterinary technician: as a nursing technician with technical veterinary medical skills who performs a wide range of technical nursing and laboratory procedures; as requiring an associate of science degree in veterinary technology, a two-year American Veterinary Medical Association (AVMA) accredited program; and as including the possible roles of nurse, anesthetist, surgical/ORT tech, radiographic tech, dental hygienist, or medical lab tech. The website identified the position of veterinary technologist: as a technologist in veterinary science and technology who plans and executes projects; supervises and teaches; as requiring a bachelor's of science degree, veterinary technology major, a two-year program after a technician's education; and as including the possible roles of clinical specialist, working supervisor, practice manager, teaching technologist, sales representative, animal housing director, or herd health technologist. The website noted that a veterinary technician required

certification or licensure by the State Board of Veterinary Medical Examiners (SBVME) but that a veterinary technologist did not require certification or licensure by SBVME, and that specialty certification was optional.

The record also includes an excerpt from "The Board of Registration in Veterinary Medicine," citing the Code of Massachusetts Regulations at 256 CMR 8.00 on the supervision of assistants and veterinary technicians.<sup>1</sup> The regulation at 256 CMR 8.01 indicates that an assistant or veterinary technician shall be authorized to administer federally-controlled substances such as anesthetics only under the immediate supervision of a licensed veterinarian on the premises.

On July 14, 2006, the director determined that administering anesthesia requires proper licensure and that the petitioner had not submitted evidence that the beneficiary was licensed in the Commonwealth of Massachusetts. The director also referenced the Department of Labor's *Occupational Outlook Handbook (Handbook)* report on credentialing requirements for veterinary technicians and veterinary technologists that indicates:

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.

The director found that the record did not include evidence that the beneficiary had passed the required exam or is licensed to perform the duties described in the Commonwealth of Massachusetts. The director concluded that the beneficiary is not eligible for H-1B classification as a veterinary technologist or a veterinary technician who administers anesthesia.

On appeal, counsel for the petitioner notes that the petitioner's submission of the "VBM Rules and Regulations" relates to veterinary assistants and technicians and thus is not applicable in this matter. Counsel also notes that the petitioner did not indicate that the beneficiary would administer anesthesia without a veterinarian's supervision. Counsel asserts that the director did not request evidence that the beneficiary had passed the "required exam;" that a license is not required for veterinary technologists in Massachusetts; and that the beneficiary's foreign credentials have been evaluated as the equivalent of a Doctor of Veterinary Medicine degree.

In order to determine whether the proffered position requires the beneficiary to have a license or certification, the AAO has reviewed the Code of Massachusetts and does not find such a requirement.<sup>2</sup> Thus, while the

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<sup>1</sup> A review of Code of Massachusetts Regulations does not disclose a section related to the occupation of veterinary technologist; only veterinarian, veterinary assistants, and veterinary technicians are included.

<sup>2</sup> The AAO informally contacted the Massachusetts Veterinary Technicians Association regarding licensure for veterinary technicians and technologists. The individual contacted stated generally that neither a veterinary technician nor a veterinary technologist required licensure in the State of Massachusetts. The Massachusetts Veterinary Technician Association website indicates that the Commonwealth of Massachusetts does not credential veterinary technicians or require licensing of veterinary technicians. ([www.massvta.org](http://www.massvta.org), accessed 12/13/2007)

lack of such a requirement is contrary to the *Handbook's* report that: "all States require them [veterinary technicians and technologists] to pass a credentialing exam following coursework," the weight of the evidence is that the beneficiary is not required to be licensed or credentialed in the Commonwealth of Massachusetts in order to practice as a veterinarian technologist or a veterinarian technician. Thus, the beneficiary is qualified to perform the services of the occupation. The petition may not be approved, however, as the position does not appear to be a specialty occupation.

The AAO observes that CIS does not rely on a position's title but rather considers the specific duties of the proffered position, combined with the nature of the petitioning entity's business operations when ascertaining the nature of a particular position. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. In this matter, the petitioner's description of the proffered position is not that of a veterinary technologist, a position associated with a four-year degree. As the petitioner has not described a specialty occupation, the matter will be remanded for entry of a new decision.

The director must first determine whether the proffered position meets any of the criteria of a specialty occupation. The AAO observes that the duties of the proffered position more closely resemble the duties of a veterinary technician than a veterinary technologist.<sup>3</sup> The AAO notes that the Commonwealth of Massachusetts does not appear to recognize the occupation of veterinary technologist as distinct from that of a veterinary technician. Neither counsel nor the petitioner has offered evidence substantiating that Massachusetts recognizes the occupation of a veterinary technologist.<sup>4</sup> Contrary to counsel's assertion, the petitioner's submission of the "VBM Rules and Regulations" relating to veterinary assistants and technicians suggests that the petitioner does find the rules and regulations regarding veterinary technicians in Massachusetts applicable to the matter at hand. Based on the current record and the duties of the position as described by the petitioner, the position is that of a veterinary technician.

The *Handbook* discusses the occupation of veterinary technician and veterinary technologist as follows:

[V]eterinarians use the skills of veterinary technologists and technicians, who perform many of the same duties for a veterinarian that a nurse would for a physician, including routine laboratory and clinical procedures. Although specific job duties vary by employer, there often is little difference between the tasks carried out by technicians and by technologists, despite some differences in formal education and training. As a result, most workers in this occupation are called technicians.

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<sup>3</sup> The AAO observes that the petitioner's March 28, 2006 statement, includes the following: "In accordance with the industry standards, the minimum requirement established by the Animal Ultrasound Clinic for this position is at least a baccalaureate of science degree in veterinary medicine or technology." The AAO notes that the Animal Ultrasound Clinic is not the petitioner in this matter but had petitioned for the beneficiary previously.

<sup>4</sup> Nor has the petitioner presented evidence that the position is that of a veterinarian allowed to practice under a temporary license under Massachusetts law. 256 CMR 4.00.

Veterinary technologists and technicians typically conduct clinical work in a private practice under the supervision of a veterinarian—often performing various medical tests along with treating and diagnosing medical conditions and diseases in animals.

Regarding the educational and training requirements of this occupation, the *Handbook* reports:

There are primarily two levels of education and training for entry to this occupation: a 2-year program for veterinary technicians and a 4-year program for veterinary technologists. Most entry-level veterinary technicians have a 2-year degree, usually an associate's degree, from an accredited community college program in veterinary technology in which courses are taught in clinical and laboratory settings using live animals. About 15 colleges offer veterinary technology programs that are longer and that culminate in a 4-year bachelor's degree in veterinary technology. These 4-year colleges, in addition to some vocational schools, also offer 2-year programs in laboratory animal science.

As the *Handbook* does not provide a clear distinction between the duties of a veterinary technician or a veterinary technologist, only noting a distinction in education, the AAO has also reviewed the excerpt from the Purdue University School of Veterinary Medicine website (Purdue excerpt) provided by the petitioner that lists the differences between a veterinary technician and a veterinary technologist. This information, also submitted by the petitioner, seems to confirm that the proffered position is actually a veterinary technician position. Upon review of the petitioner's description of the proposed duties of the position, including planning and executing medical tests, preparing and administering vaccines, medications, and treatments, preparing animals for surgery, caring for and monitoring animals recovering from surgery, and administering anesthesia, the petitioner's description most closely resembles the duties and role of a veterinary technician as listed in the Purdue excerpt. For example, the excerpt provided indicates that a veterinary technician is a nursing technician and that a veterinary technician's possible roles include nurse, anesthetist, surgical/ORT tech, radiographic tech, dental hygienist, or medical lab tech. These roles most closely resemble the duties the petitioner has described.

Upon review of the duties of a veterinary technologist, as listed in the Purdue excerpt, the duties relating to teaching and supervising and the possible roles of a veterinary technologist include clinical specialist, working supervisor, practice manager, teaching technologist, sales representative, animal housing director, or herd health technologist. The petitioner does not describe the proffered position in terms of a supervisory or teaching position and does not provide evidence that the proffered position includes any of the other possible positions that comprise the role of a veterinary technologist according to the Purdue excerpt.

The petitioner in this matter has failed to sufficiently describe duties that would require the individual in the position to obtain a four-year degree as a veterinary technologist, rather than a two-year degree as a veterinary technician. The limited information in the record regarding the proffered position does not evidence that the position will require the theoretical and practical application of a body of highly specialized knowledge, obtained through four years of university-level coursework in the field of veterinary medicine. The AAO acknowledges that the beneficiary's foreign degree is in veterinary medicine but it is not the beneficiary's academic experience that makes a proffered position the equivalent of a specialty occupation; rather the actual

daily duties demonstrate whether the position requires knowledge associated with the attainment of a baccalaureate or higher degree in a specific discipline. In this matter, the daily duties do not demonstrate that the position requires knowledge associated with the attainment of a baccalaureate or higher degree in a specific discipline.

As the director did not specifically discuss whether the description the petitioner provided comprised the duties of a specialty occupation, the matter must be remanded for entry of a new decision. The director must determine whether the petitioner has established that the proffered position is a specialty occupation.

This matter is remanded for the director to determine whether the proffered position is a specialty occupation. The director may issue an RFE requesting evidence from the petitioner that the duties of the position require a baccalaureate degree in animal science or veterinary technology and other evidence as it relates to the regulatory requirements for eligibility. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's July 14, 2006 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.