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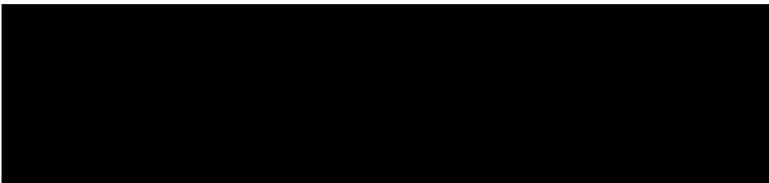
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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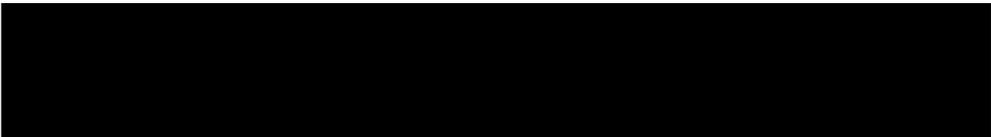
FILE: EAC 06 156 54957 Office: VERMONT SERVICE CENTER Date: FEB 04 2008

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 appeal will be sustained. The petition will be approved.

The petitioner operates a 1300-cow dairy farm. It seeks to employ the beneficiary as a dairy management specialist. 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 March 15, 2007 the director denied the petition, determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that the proffered position is a specialty occupation requiring the theoretical and practical application of a body of highly specialized knowledge, applied dairy science, and at least the attainment of a bachelor's degree in the relevant field.

The record of proceeding before the AAO contains: (1) the Form I-129 filed April 29, 2006 and supporting documentation; (2) the director's May 8, 2006 request for further evidence (RFE); (3) the petitioner's June 22, 2006 response to the director's RFE and documentation; (4) the director's second RFE dated July 5, 2006; (5) the petitioner's September 28, 2006 response to the second RFE; (6) the director's October 6, 2006 denial letter; (7) an untimely filed Form I-290B, counsel's brief and documentation in support of the appeal; (8) the director's review of the appeal as a motion to reopen and the director's subsequent March 5, 2007 denial of the petition; and (9) the timely filed Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner has established that the job it is offering to the beneficiary meets the following statutory and regulatory requirements for 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner initially provided an overview of its dairy operations but did not provide a description of the duties of the proffered position. In response to the director's RFE on this issue, the petitioner stated: "the primary duties of the Dairy Management Specialist are to research and implement methods of the selection, breeding, feeding, and management of dairy cattle." The petitioner added that the dairy management specialist would manage the breeding program, study the nutritional value and feed requirements of the dairy cattle, carry out experiments to determine the effects of various conditions on the quality of the milk produced, and develop improved practices in the care and management of the dairy herd. The petitioner also included, among other items, a description of the dairy management specialist's specific duties; its advertisement for an agricultural science specialist requiring a bachelor's degree in agricultural science or a related field; advertisements from other organizations for animal scientists and dairy production specialists; and its list of employees holding or previously holding the position of dairy management specialist.

In response to the director's second RFE, the petitioner provided: (1) a letter from the owner of Lundgren Farms indicating that it had hired a dairy management specialist and that it required a bachelor's degree in dairy science for the position; (2) an opinion authored by a professor working in the Department of Agricultural and Applied Economics at the University of Wisconsin-Madison who opined: "the position of Dairy Management Specialist requires a bachelor's degree in animal science, dairy science, or a closely related field;" and (3) a list of its employees in H-1B classification that had worked or were working in the position of dairy management specialist.

Upon review of the evidence of the record, the director determined that the petitioner had not established the proffered position as a specialty occupation.

On appeal, counsel for the petitioner references the previously submitted documents and asserts that the evidence establishes that the proffered position is a specialty occupation.

Upon review of the evidence in the record and the Department of Labor's *Occupational Outlook Handbook's* (*Handbook*) report on animal scientists as discussed under the heading of agricultural and food scientists, the AAO finds the proffered position is a specialty occupation. The *Handbook* reports:

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.

The *Handbook* indicates that a bachelor's degree in agricultural science is sufficient for some jobs in applied research or for assisting in basic research, but for basic research or college teaching or advancement to administrative research positions, a master's or doctoral degree is required. The petitioner in this matter has provided a sufficiently detailed description of the proffered position that corresponds to the generally stated duties found in the *Handbook*. Moreover, the petitioner in this matter has provided evidence that it has employed individuals in the proffered position as well as evidence of their academic education. Further, the AAO finds that the petitioner has provided a description of duties that includes elements that are sufficiently specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO also takes note of [REDACTED]'s opinion regarding the proffered position. Although the AAO finds that [REDACTED]'s opinion alone is insufficient to establish the proffered position as a specialty occupation, when considered with the other evidence in the record and the *Handbook's* discussion of the educational requirements of an animal scientist, the opinion confirms the AAO's determination that the proffered position is a specialty occupation. It is the totality of the evidence, including the petitioner's detailed information relating the duties of the proffered position to the petitioner's specific business, that enables the AAO to conclude that the nature of the specific duties of the position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record reflects that the beneficiary will be performing the duties of a specialty occupation and has completed a six-year program at Stavropol Labour Red Banner Order Agricultural Institute and earned a degree in veterinary medicine; a degree that has been evaluated to be the equivalent of a doctor in veterinary medicine. The beneficiary's degree is sufficiently related to the duties of the proffered position; thus, the beneficiary is qualified to perform the services of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. See Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The director's March 5, 2007 decision is withdrawn and the petition is approved.