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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D2

[redacted]

Date: MAR 08 2012 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the 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 dismissed. The petition will be denied.

The petitioner claims to be an enterprise engaged in horse breeding, cow/calf, and commercial hay operations with six employees. It seeks to employ the beneficiary as an animal breeder 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 concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE; (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 issue on appeal before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 [(1)] 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 [(2)] 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary's services as an animal breeder. The employment contract between the petitioner and the beneficiary executed on March 8, 2009 and submitted with the initial filing indicates the proffered position would require the beneficiary to perform the following duties:

- Examine animals in order to defect symptoms of illness or injury.
- Place vaccine in drinking water and/or inject vaccines in order to protect animals from diseases.
- Select animals to be bred, and semen specimens to be used, according to knowledge of animals, genealogies, traits and desired offspring characteristics.
- Assist to artificially lead the artificial insemination animals.
- Apply wound dressings, clean teeth, and take vital signs of animals.
- Treat minor injuries and ailments, and contact veterinarians in order to obtain treatment for animals with serious illnesses or injuries.
- Record animal characteristics such as weight, growth patterns and diets.
- Observe animals in heat in order to detect approach of estrus, and exercise animals to induce or hasten estrus, if necessary.
- Ranch operation; entailing cattle and horses.
- Breeding; foaling/calving; health maintenance and assist in training.
- Clip or shear hair on animals.

This employment contract and the submitted job posting information does not state any requirements for the proffered position. The petitioner indicates on the Texas Prevailing Wage Information Request Form that the proffered position requires 24 months of experience and a bachelor's degree in veterinary science or equine science. The petitioner also submitted an academic credentials report prepared by [redacted], and the beneficiary's diploma, intern certificate, certificate of professional exams and transcripts in the degree of Zootechnist Veterinarian Doctor from the University of Tamaulipas.

The submitted Labor Condition Application (LCA) was certified for an "Animal Breeder" to work full-time at the petitioner's business in Hondo, Texas at an annual salary of $35,277.00, and the position was classified on the Texas Prevailing Wage Information Request Form and on the Form I-129 as an animal breeder, SOC/O*Net Code 45-2021.00.

On July 7, 2009, the director requested, *inter alia*, additional information from the petitioner to establish that the proffered position is a specialty occupation among other issues.

Counsel responded to the director's RFE with only a letter dated July 27, 2009 from the owner of the petitioner. In the letter, he described his business expansion plan in detail and continued that as a result, it is necessary for him to expand and upgrade the skills of his staff. The petitioner also stated in part that:

> Within the cattle and horse industries the businesses employ either skills specified in the application or hire the service of veterinary clinics to provide the service. I am requesting to employ a beneficiary that has that experience with such operations and has a veterinary license issued by the Republic of Mexico. Although he cannot prescribe medication required from a U.S. veterinary nor do surgeries, he can do all the services that an assistant to a [v]eterinary could do and be on premise full time.

The director denied the petition, finding that the petitioner had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel contends that the proffered position is an animal breeder and that the *O*Net* designates the job zone and education level as follows: "Most occupations in this zone require training in vocational school, related on-the-job experience, or an associate's degree. **Some may require a bachelor's degree.**" Counsel submitted a copy of the Texas Prevailing Wage Information Request Form for the instant matter and the print-out from *O*Net Online* Summary Report for 45-2012.00 – Animal Breeders in support of his assertions.

To make its determination whether the proffered position, as described in the initial petition and the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(1)* and *(2)*: a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (*Handbook*), on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously noted, counsel relies solely on *O*NET* to argue that the proffered position of Animal Breeder with the petitioner is a specialty occupation. However, *O*NET*, available at http://www.onetonline.org/link/summary/45-2021.00 (last accessed February 21, 2012), sets forth Job Zone Three for the title of Animal Breeders which means medium preparation needed. For the description of education and training, *O*NET* states that "Most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree. Previous work-related skill, knowledge, or experience is required for these occupations. Employees in these occupations usually need one or two years of training involving both on-the-job experience and informal training with experienced workers."

The *O*NET* report for animal breeders provided by counsel is not probative, as the *O*NET* is not designed to assess the specialty occupation status of occupations or the particular positions addressed in these reports. Furthermore, as quoted above, the descriptions provided in the *O*NET* clearly show that Animal Breeders are not positions for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum entry requirement.

The AAO notes that the proffered position title most closely resembles the position title of Animal Breeders under the chapter of Agricultural Workers, Other in the *Handbook*. The *Handbook*, 2010-

11 ed., available at http://www.bls.gov/oco/ocos349.htm (last accessed February 21, 2012) describes the nature of work for "Agricultural Workers, Other" as follows (emphasis added):

> **Nature of the Work**
>
> Agricultural workers play a large role in getting food, plants, and other agricultural products to market. Working mostly on farms or ranches, but also in nurseries and slaughterhouses, these workers have numerous and diverse duties. Among their activities are planting and harvesting crops, installing irrigation, and delivering animals. While most agricultural workers have relatively few technical skills, some have college degrees that train them to breed animals with specific traits.
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> . . .
>
> *Animal breeders* select and breed animals using their knowledge of genetics and animal science to produce offspring with desired traits and characteristics, such as chickens that lay more eggs, pigs that produce leaner meat, and sheep with more desirable wool. *Other animal breeders* breed and raise cats, dogs, and other household pets. *Larger and more expensive animals, such as horses and cattle, are usually bred through artificial insemination, a specialized technique which requires taking semen from the male and then inseminating the female.* This process ensures better results than conventional mating and also enables one prized male to sire many more offspring. To know which animals to breed and when, *animal breeders keep detailed records, including the health of the animals, their size and weight, and the amount and quality of the product produced by them.* They also *keep track of the traits of the offspring.* Some animal breeders work as consultants for a number of farmers, but others breed and raise their own animals for sale or future breeding. For those who raise animals, *tasks might include fixing and cleaning animal shelters, feeding and watering the animals, and overseeing animals' health. Some breeders supervise others* who perform these tasks. Animal breeders also read journals and newsletters to learn the latest information on breeding and veterinary practices.

The petitioner has set forth the duties for the proffered position based on the description of duties for animal breeders described in the *O*Net* and in the *Handbook.* The description of the duties of the proffered position shows that the proffered position was petitioned for, the LCA was certified for and the prevailing wage was obtained for an animal breeder position and that the beneficiary will perform the duties as an animal breeder for the petitioner. In this regard, the AAO has considered all of the assertions of counsel in support of the requirements of the position in the record.

The *Handbook* describes the education and training requirement for agricultural workers in pertinent part as follows:

> The majority of agricultural workers learn their skills on the job in less than a month; animal breeders require more work experience or a college degree.

> ***Education and training.*** Most farmworkers learn their jobs quickly as they work; many do not have a high school diploma. People without a high school diploma are particularly common in the crop production sector, which is more labor-intensive and employs numerous migrant farmworkers. Other agricultural workers may require a month to a year of training on the job, depending on their responsibilities.

In short, the descriptions provided in the *Handbook* clearly shows that animal breeders are not positions for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum entry requirement. While the *Handbook* states that animal breeders require more work experience or a college degree, it clearly indicates that it is possible for someone with more than a month of experience or any college degree, such as an associate degree, to meet the minimum requirement for an animal breeder position.

The record's descriptions of the proposed duties are limited to generic and generalized functions which are normally performed by animal breeders pursuant to descriptions in the *O*Net* and *Handbook*, and based on the fact that neither *O*Net* nor the *Handbook* indicates that at least a bachelor's degree in a specific specialty or its equivalent is a minimum entry requirement for this occupation, it cannot be found that the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava,* 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent, and the petitioner failed to demonstrate that parallel animal breeder positions for a small horse breeding operation require a bachelor's degree in veterinary science or equine science for entry into the occupation. Therefore, the petitioner does not demonstrate that it meets the requirements of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner has also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which provides that "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." The evidence of

record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required as a minimum requirement. Neither the petitioner nor its counsel has provided evidence to distinguish the proffered position as unique from or more complex than animal breeder positions, such as those as described in the *Handbook*, that can be performed by persons without a specialty bachelor's degree or its equivalent.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) -- the employer normally requires a degree or its equivalent for the position. The petitioner provided no information about its normal education requirements for the position. As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).[1]

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. To the extent that they are depicted in the record, the duties of the proposed position are not so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The AAO, therefore, concludes that the proffered position does not meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The appeal will be dismissed and the petition denied. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.

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[1] While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").