U.S. Department of Homeland Security
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Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

D1

[redacted]

FILE: EAC 03 040 54924 Office: VERMONT SERVICE CENTER Date: JUN 14 2007

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]

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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 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 is a horse farm with six employees and reported gross and net annual income of approximately $250,000. It seeks to employ the beneficiary as a horse farm manager. The petitioner endeavors to employ the beneficiary in the nonimmigrant classification as a 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 on September 29, 2003, having concluded that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation, submitted on November 15, 2002; (2) the director's request for additional evidence, dated April 15, 2003; (3) counsel's response, dated November 12, 2002, to the director's request for evidence and supporting documentation; (3) the director's denial letter, dated September 29, 2003; and (4) the Form I-290B, dated October 29, 2003, and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The AAO accepts counsel's evidence submitted to establish the timely filing of the petitioner's appeal. Therefore, the only issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job 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 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). 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.

The petitioner states that it is seeking the beneficiary's services as a horse farm manager. In a letter of support, dated November 10, 2002, the petitioner described the beneficiary's proposed duties exactly as follows:

> The Manager position is responsible for the overall management of our farm. Duties include but are not limited to: Management for people helping tenats [sic] with any problem. (i.e., responsible for the administration of all farm projects; prepare financial reports for projects, maintain accurate filing system for all farm contracts; monitor expenditures to ensure correct attribution to project budget line items including monitoring weekly and monthly financial reports; review contract budgets and help prepare contract modifications as necessary; oversee and coordinate the management of the petty cash accounts; oversee, coordinate, and manage receivables and payables.

The director determined that the petitioner had submitted insufficient evidence to process the petition. On April 15, 2003, the director requested that the petitioner submit the following documentation: (1) the petitioner's job announcement for this petition, and evidence of any other forms of recruitment utilized by the company for the proffered position; (2) a detailed statement articulating the beneficiary's proposed duties and day-to-day responsibilities, including the percentages of time the beneficiary would spend performing those functions each day, and the specific tasks that require the expertise of someone with a bachelor's degree; (3) evidence showing that the petitioner and similarly situated businesses in the same industry require individuals with a bachelor's degree in a specific field of study to fill the position; and, (4) an explanation of how many other individuals are currently employed in the position of horse farm manager, how many individuals have filled this position in the past, and documentary evidence to establish those employees had a bachelor's degree.

The petitioner submitted a response on July 11, 2003. In a response letter, dated July 10, 2003, the petitioner further described the proposed position of horse farm manager as follows:

> Our properties cover 1200 acres and include over twenty-five buildings encompassing houses, barns, garages, breeding stalls, and other assorted buildings. On the property live employees and tenants. [The petitioner's] gross revenue exceeds a million dollars a year. [The petitioner] is the wholly owned thoroughbred-breeding farm to be managed by the beneficiary. Her duties include maintaining the books, i.e. budgets and finances for all required maintenance which, as seen on the highlighted Form 1120S enclosed of the 2002 Federal Tax Return, was nearly a half million dollars. The complexity and sophistication of this premier breeding farm requires not merely a college degree, but specialization in business administration. The individual must be computer literate as she will answer e-mails from horse breeders worldwide, purchase equipment and supplies on-line, etc. She must also possess the accounting knowledge to provide the book keeping necessary to manage the farm budget and maintain numerous separate accounts for separate horses, buildings, capital equipment, etc.
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> * * *
>
> The nature of our business does not lend itself to scheduled activities, as each day's routine will be different from any other day. Nevertheless, most days will require the manager to review and negotiate contracts with tradesmen, landscapers, construction companies, etc. required for the constant maintenance of all the buildings and equipment, and the provisioning of the farm. These meetings are generally scheduled in the mornings, lunch is often had with other farm supervisors such as the horse trainer to discuss preparation for upcoming shows, and necessary animal travel arrangements, required veterinary treatments, etc. Each day after lunch is devoted to office work generally of bookkeeping nature, which absolutely requires her educational background. This work includes proper budgeting for each building under repair, allocation of expenses to the correct entity (many individual's horses are owned in separate syndicates for bookkeeping purposes) bi-weekly payrolls, and preparation of all data for use by the

> tax preparers and financial managers. Thus, management of this business requires obtaining the same educational level as any other million to two million dollar business. Thus it is not a "farming or horse breeding industry" requirement that our manager must have a business degree, but rather a requirement driven by the fact that our operation is not "just a farm", but a big business managing very expensive individual properties.

The director denied the petition on September 29, 2003, concluding that the proffered position is not a specialty occupation.

On appeal, counsel states the petitioner has overcome the objections of CIS. According to counsel the first of these objections is whether the petitioner can establish that in its industry, a bachelor's degree is a standard minimum requirement for the job offered. Counsel submits Internet job postings "from companies in similar industries as evidence that the position requires someone holding at least a bachelor's degree to perform the job duties associated with the proffered position." Counsel notes that although the industry and job titles vary, the job duties are similar. Counsel contends that the second objection of CIS is whether the petitioner can establish that it requires the services of a professional accountant. Counsel asserts that the *Dictionary of Occupational Titles (DOT)* designates the position of General Manager, Farm with an Standard Vocational Preparation (SVP) of 8, which qualifies the position for classification as a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the AAO finds that the proffered position is not a specialty occupation.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. In reviewing the 2006-2007 edition of the *Handbook*, the AAO finds that the duties and responsibilities of the proposed position are encompassed within the *Handbook's* entry for three occupational groupings as discussed below.

A review of the duties of the proposed position finds them closely aligned to the responsibilities of three occupational groupings discussed in the *Handbook:* (1) farmers, ranchers and agricultural managers; (2) bookkeeping, accounting, and auditing clerks; and, (3) payroll and timekeeping clerks.

In its discussion of the duties of farmers, ranchers and agricultural managers, the 2006-2007 edition of the *Handbook* states the following:

American farmers, ranchers, and agricultural managers direct the activities of one of the world's largest and most productive agricultural sectors. They produce enough food and fiber to meet the needs of the United States and for export.

Farmers and ranchers own and operate mainly family-owned farms. . . . They also plan and oversee breeding and marketing activities. . . .

Responsibilities of farmers and ranchers range from caring for livestock, to operating machinery, to maintaining equipment and facilities. The size of the farm or ranch often determines which of these tasks farmers and ranchers will handle themselves. . . . Although employment on most farms is limited to the farmer and one or two family workers or hired employees, some large farms have 100 or more full-time and seasonal workers. Some of these employees are in nonfarm occupations, working as truck drivers, sales representatives, bookkeepers, and computer specialists.

Agricultural managers manage the day-to-day activities of one or more farms, ranches, nurseries, timber tracts, greenhouses, and other agricultural establishments for farmers, absentee landowners, or corporations. Their duties and responsibilities vary widely, but focus on the business aspects of running a farm. On small farms, they may oversee the entire operation; on larger farms, they may oversee a single activity, such as marketing. Agricultural managers usually do not perform production activities; instead, they hire and supervise farm and livestock workers, who perform most of the daily production tasks. In these cases, managers may establish output goals; determine financial constraints; monitor production and marketing; hire, assign, and supervise workers; determine crop transportation and storage requirements; and oversee maintenance of the property and equipment.

Farmers, ranchers, and agricultural managers make many managerial decisions. Farm output and income are strongly influenced by the weather, disease, fluctuations in prices of domestic and foreign farm products, and Federal farm programs. In crop production operations, farmers and managers usually determine the best time to plant seed, apply fertilizer and chemicals, and harvest and market the crops. They use different strategies to protect themselves from unpredictable changes in the markets for agricultural products. Many farmers and managers carefully plan the combination of crops they grow, so that if the price of one crop drops, they will have sufficient income from another crop to make up for the loss. While most farm output is sold directly to food-processing companies, some farmers—particularly operators of smaller farms—may choose to sell their goods directly through farmers' markets or may use coöperatives to reduce their financial risk and to gain a larger share of the retail dollar. For example, in community-supported agriculture (CSA), cooperatives sell shares of a harvest to consumers prior to the planting season, thus freeing the farmer from having to bear all the financial risks and ensuring the farmer a market for the produce of the coming season.

> Farmers, ranchers, and agricultural managers also negotiate with banks and other credit lenders to get the best financing deals for their equipment, livestock, and seed. They also must keep abreast of constantly changing prices for their products and manage the risk of fluctuating prices. Those who plan ahead may be able to store their crops or keep their livestock to take advantage of higher prices later in the year. Those who participate in the risky futures market, where contracts on future production of agricultural goods are bought and sold, can minimize the risk of sudden price changes by buying futures contracts which guarantee that they will get at least a certain price for their agricultural goods when they are ready to sell.
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> Like other businesses, farming operations have become more complex in recent years, so many farmers use computers to keep financial and inventory records. They also use computer databases and spreadsheets to manage breeding, dairy, and other farm operations.

The AAO next turns to the *Handbook's* discussion of the duties of bookkeeping, accounting, and auditing clerks:

> Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They represent a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.
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> In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.
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> In large offices and accounting departments, *accounting clerks* have more specialized tasks. . . . Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts to ensure that payments are up to date.
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> More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure the completeness and accuracy of data on accounts; and code documents according to company procedures. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks also review computer

> printouts against manually maintained journals and make necessary corrections. They may review invoices and statements to ensure that all the information appearing on them is accurate and complete, and they may reconcile computer reports with operating reports.
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> *Auditing clerks* verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded. . . .
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> As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks are using specialized accounting software on personal computers. With manual posting to general ledgers becoming obsolete, these clerks increasingly are posting charges to accounts on computer spreadsheets and databases. They now enter information from receipts or bills into computers, and the information is then stored either electronically or as computer printouts (or both). The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, procurement, and billing. . . .

Although counsel states on appeal that the petitioner requires the services of a professional accountant, and cites to the *Handbook's* discussion of accountants, the AAO finds that the portions of the proposed duties that relate to financial transactions are analogous to those of bookkeeping, accounting, and auditing clerks, as these positions are described in the *Handbook.*

Finally, the *Handbook's* discussion regarding the duties of payroll and timekeeping clerks also relates to the proposed position, as follows:

> Payroll and timekeeping clerks perform a vital function: ensuring that employees are paid on time and that their paychecks are accurate. If inaccuracies occur, such as monetary errors or incorrect amounts of vacation time, these workers research and correct the records. . . .
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> * * *
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> In some small offices, clerks or other employees in the accounting department process payroll. . . .

Therefore, based upon its reading of the *Handbook*, the AAO concludes that the duties of the proposed position, as described by the petitioner in its letter of support and in its response to the director's request for additional evidence, combines the duties of three occupational groupings, as they are described in the *Handbook*: (1) farmers, ranchers and agricultural managers; (2) bookkeeping, accounting, and auditing clerks; and (3) payroll and timekeeping clerks. The overwhelming majority of the duties proposed for the beneficiary are encompassed within these three groupings. Having made such a determination, the AAO next turns to the *Handbook* to determine whether these occupations normally require applicants for

employment to have the minimum of a baccalaureate or higher degree, or its equivalent, in a specific field.

The *Handbook* states the following regarding the educational requirements for farmers, ranchers and agricultural managers:

> Growing up on a family farm and participating in agricultural programs for young people, such as the National FFA Organization or the 4-H youth educational programs, are important sources of training for those interested in pursuing agriculture as a career. However, modern farming requires increasingly complex scientific, business, and financial decisions, so postsecondary education in agriculture is important even for people who were raised on farms.
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> The completion of a 2-year degree, or better, a 4-year bachelor's degree program in a college of agriculture, is becoming increasingly important for farm managers and for farmers and ranchers who expect to make a living at farming. A degree in business or farm management with a concentration in agriculture is important, but even after obtaining formal education, novices may need to spend time working under an experienced farmer to learn how to put into practice the skills learned through academic training. A small number of farms offer, on a formal basis, apprenticeships to help young people acquire such practical skills.
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> Students should select the college most appropriate to their specific interests and location. All State university systems have at least one land-grant college or university with a school of agriculture. Common programs of study include agronomy, dairy science, agricultural economics and business, horticulture, crop and fruit science, and animal science. For students interested in aquaculture, formal programs also are available and include coursework in fisheries biology, fish culture, hatchery management and maintenance, and hydrology. Whatever one's interest, the college curriculum should include courses in agricultural production, marketing, and economics.

For bookkeeping, accounting, and auditing clerks, the requirements as discussed by the *Handbook* are as follows:

> Most bookkeeping, accounting, and auditing clerks are required to have a high school degree at a minimum. However, having some college is increasingly important and an associate degree in business or accounting is required for some positions. Although a college degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular company or to enter the accounting or finance field with the hope of eventually being promoted to professional or managerial positions.

The *Handbook* offers the following information regarding the educational qualifications of payroll and timekeeping clerks:

> Most employers prefer applicants with a high school diploma or GED. Computer skills are very desirable. Payroll and timekeeping clerks learn their skills through a combination of on-the-job experience and informal training. Training also can be attained through programs in high schools, business schools, and community colleges.

These findings do not support a finding that a bachelor's degree is normally required for entry into this occupation. The *Handbook* finds that completion of a 2-year degree and a 4-year bachelor's degree program is "becoming increasingly important" for farmers, ranchers and agricultural managers. A bachelor's degree in a specific specialty, however, is not a minimum requirement for entry into this occupation. Moreover, the fact that obtaining a 2-year degree or a 4-year degree is "becoming increasingly important" is not synonymous with the standard imposed by the regulation of normally requiring a bachelor's degree, or its equivalent. The *Handbook* also reports that bookkeeping, accounting, and auditing clerks are "rarely required" to possess a college degree, and that employers prefer payroll and timekeeping clerks to possess a high school diploma or GED. It is clear that a bachelor's degree, or its equivalent, is not the normal minimum requirement.

Also, the AAO notes that the petitioner finds acceptable a bachelor's degree in business administration for the position. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialized occupation. *See Matter of Michael Hertz Associates*, 19 I & N Dec. 558 (Comm. 1988). Again, 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.

Finally, counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. An SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor specify the particular type of degree, if any, that a position would require. Accordingly, the AAO accords no weight to this information.

For all of these reasons, the AAO finds that the position does not qualify as a specialty occupation on the basis of a degree requirement under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's

industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the three job postings submitted by counsel on appeal. However, counsel has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in positions that are parallel to the proffered position and found in organizations similar to the petitioner.

There is no information in the record to establish that the companies advertising their vacancies in the submitted job postings are similar in size, scope, or scale of operations, business efforts, or expenditures to the petitioner, a horse farm with six employees. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO has no basis to conclude that any of the job postings submitted by counsel are from organizations that may be considered "similar" to the petitioner.

Moreover, these advertisements provide too little information regarding the duties of the positions that would allow the AAO to undertake a meaningful analysis as to whether the positions are in fact "parallel" to the position proposed here. The AAO notes that one of the advertisements requires a degree in engineering, which does not indicate similarity to the proffered position. Nor do these three postings establish a degree requirement in a specific specialty, as the AAO notes that the two remaining advertisements require a "bachelor's degree," with no particular field of study mentioned. Again, 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.[1] The fact that these positions share a few similar duties with the petitioner's proposed position does not mean that they are in fact parallel positions. Finally, the AAO notes that three postings are too few to establish an industry-wide standard.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

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[1] *See also Matter of Michael Hertz Associates*, 19 I & N Dec. 558 (Comm. 1988).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which requires a demonstration that the position is so complex or unique that it can only be performed by an individual with a degree. There has been no demonstration that the proposed position is unique from or more complex than the general range of farmers, ranchers and agricultural managers, bookkeeping, accounting and auditing clerks, and payroll and timekeeping clerk positions in other, similar organizations, which would not normally require a degreed individual. The *Handbook* indicates that such positions generally do not normally require at least a baccalaureate degree in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions. Moreover, the AAO notes that the petitioner finds acceptable a degree with a generalized title, which precludes classification as a specialty occupation under this criterion.

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In its response to the director's request for evidence, the petitioner indicated that the position of horse farm manager is a newly-created position, which precludes approval under the third criteria.

The petitioner further stated that previously the maintenance, supervision and bookkeeping functions were separate and a "person with a minimum of a bachelor's degree has always performed the bookkeeping and financial functions." However, the petitioner did not present any supporting documentation of its past employment practices, as requested by the director. In the instant case, the petitioner has submitted no evidence regarding its past hiring practices with regard to other similarly situated employees. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

While the petitioner states that a degree is required, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or 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. To interpret the regulations in any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

Finally, the AAO is not persuaded by counsel's assertion that whether an employer has previously hired a similar professional in the past is irrelevant. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) states

clearly that in order to establish eligibility under this criterion, the petitioner must establish that it normally requires applicants for the position to possess a degree.

Accordingly, the petitioner has not established the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. On appeal, counsel points to the DOT's discussion of "general manager, farm" as proof that the duties of the proffered position meet the specialized and complex threshold established by the fourth criterion. The AAO disagrees. [2]

The AAO refers to the *Handbook* excerpts quoted previously in this decision, which state that a bachelor's degree in a specific specialty is not the normal minimum entry requirement for positions such as the one proposed here. The duties of the proposed position do not appear more specialized and complex than those of the corresponding positions as set forth in the *Handbook*. The AAO finds nothing in the record to indicate that the beneficiary, in her role as a horse farm manager at the petitioner's place of business, would face duties or challenges any more specialized and complex than those outlined in the *Handbook*.

To the extent that they are depicted in the record, the duties of the proposed position do not appear 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. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*), (*2*), (*3*), and (*4*), and the petition was properly denied. The proposed position in this petition is not a specialty occupation, so the beneficiary's qualifications to perform its duties are inconsequential. Accordingly, the AAO will not disturb the director's denial of the petition.

The petitioner may wish to seek to employ the beneficiary as a permanent worker in the United States by filing an immigrant visa petition for a skilled worker (Form I-140, with appropriate documentation and a labor certification.)

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[2] The AAO also refers to its previous discussion regarding the inapplicability of the *DOT's* SVP assessment to a determination of whether a particular position qualifies for classification as a specialty occupation.

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 not sustained that burden.

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