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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: SRC-99-116-53565 Office: Texas Service Center

Date: MAY 21 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

Public Copy

IN BEHALF OF PETITIONER:



Identifying information
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a grounds and golf course maintenance business with 24 employees and a gross annual income of \$35 million. It seeks to employ the beneficiary as an assistant superintendent of training for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the petitioner had not provided evidence to establish the scope of knowledge required for a superintendent in training or verification of the highest level of education of other superintendents or assistant superintendents. On appeal, counsel states that the petitioner provided job descriptions which clearly show the requirement of a baccalaureate degree or an equivalent as a requirement to perform the job. Counsel further states that the petitioner provided evidence to show that a baccalaureate degree is common to the industry in parallel positions. Counsel also states that the petitioner submitted detailed information pertaining to its current superintendent and assistant superintendent, and that the Department of Labor's Occupational Outlook Handbook, (Handbook), supports the petitioner's argument that the duties of the proffered position are so specialized and complex as to require a baccalaureate degree. In addition, counsel submits information from various websites in support of his argument.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service

considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- * Assisting the managing a staff of 23 employees, as well as implementation of on-going training and support to protect equipment assets
- * Assisting in creating, monitoring, and adhering to budget guidelines of 1.2 million dollars
- * Assisting in directing the daily activities of the Golf Course Maintenance Staff
- * Will coordinate frequently with all aspect[s] of the Golf Shop operation to ensure the highest standard of approval by our members and guest[s]
- * Training employees in proper chemical and fertilizer application for maintenance of the course
- * Training course maintenance staff to identify many different types of weeds and diseases and use of correct pesticide to correct problem
- * Training employees in proper procedures and legal issues as it relates to Wage and Hour, OSHA, Department of environmental regulation, and the Department of Environmental Protection
- * Training employees in proper use and care of all equipment
- * Monitoring and suggesting daily irrigation requirements
- * Work as a strategic and operational partner with Planning and Development Department, Accounting Department, Human Resources Department to achieve company and corporate objectives

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the beneficiary's position as an assistant superintendent is an occupation that would normally require a bachelor's degree. In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to be that of a grounds manager. In its Handbook, 2000-2001 edition, at page 332, the Department of Labor (DOL) describes the job of a grounds manager as follows:

Grounds managers may participate in many of the same tasks as maintenance personnel but typically have more extensive knowledge of horticulture, turf management, ornamental plants, landscape design and construction, pest management, irrigation, and erosion control. In addition, grounds managers have supervisory responsibilities and must manage and train personnel, draw up work contracts, efficiently allocate labor and financial resources, and engage in public relations activities.

A review of Handbook at page 333 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a grounds manager. The requirements are described in the Handbook as follows:

Advancement or entry into positions as grounds manager or landscape contractor usually requires some formal education beyond high school, and several years of progressively responsible experience...Several years of hands-on experience plus a 4-year bachelor's degree, a 2-year associate degree, or a 1-year vocational-technical degree in grounds management or landscape design or a closely related "green" discipline, usually provide a good background for those who wish to deal with the full range of landscaping responsibilities.

In view of the foregoing, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. Counsel states that: "Mr. [REDACTED] the current Superintendent has twelve years of golf maintenance experience, and the assistant superintendent has 8 1/2 years of experience in addition to an Associate in Science degree in Golf Course Operations." The record, however, contains no evidence that the requirement for hiring such employees was a baccalaureate or higher degree in a specialized area. Nor does the record contain any evidence that such employees held baccalaureate or higher degrees in a specialized area at the time they were hired.

Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Counsel argues, however, that the following evidence shows that the educational requirement of a baccalaureate degree is common to the industry in parallel positions:

Description of the role the Professional Grounds Management Society describing the responsibility to promote, enhance, and protect the environment through professionalism has been achieved in the "Green Industry." It shows that the basis for membership with regard to the educational and experience background required for a membership and the continuing education even after a bachelor's degree in an agronomic field.

Printout from the website of Edwin B. Raslin Companies, [REDACTED] Inc. which specializes in golf course management, describing the [sic] professional background of their Golf Course Superintendent that includes a Plant and Soil Science Degree as well as significant years of experience in golf course management.

Classified printout from the IGIN website (Irrigation and Green Industry Network) posting a position of Golf Course Superintendent, where a four year degree in Agronomy or Turf Management is required.

Printout from Purgatory Golf Club's website, describing the educational background of their Superintendent, which includes and [sic] Agronomy baccalaureate degree.

Printout from GCSAA's website (Golf Course Superintendents Association of America), which includes: Education qualifications for golf course superintendents, current marketplace for golf course superintendent positions, and guidance on educational programs to achieve a career in the golf course superintendent field.

The first document from the Professional Grounds Management Society states that the *suggested* (emphasis added) educational requirements for working in the field are:

- * a B.S. degree in Grounds Management, Horticulture, Agronomy or related field with four years of experience, two of which should be in a supervisory capacity.
- * A.A. degree in Grounds Management, Horticulture, Agronomy [or] related field with six years of experience, two of which should be in a supervisory capacity.
- * Certificate program in Grounds Management, Horticulture, Agronomy or related field with eight years of experience, two of which should be in a supervisory capacity.
- * Ten years of on-the-job training, two of which should be supervisory in capacity.

The above list of suggested educational requirements does not sufficiently demonstrate that the degree requirement is common to the industry in parallel positions among similar organizations. It is also noted that the fourth item indicates that ten years of on-the-job-training is sufficient for a grounds professional position, and no formal education is necessary at all. The printout from the website of Edwin B. Raslin Companies, Golf Management Group, Inc. states in part that: "Golf Management Group, Inc., is a licensed contractor which is headed by a Certified Golf Course Superintendent with a Plant and Soil Science Degree and twelve years golf course management experience." The one-page printout does not provide specific information such as whether the degree held by the superintendent is a baccalaureate degree, whether such degree was a requirement, or whether its past superintendents were required to hold such degrees. The "classified" printout from the IGIN website (Irrigation and Green Industry Network) and the information indicating that the superintendent of Purgatory Golf Club holds an agronomy degree do not by themselves demonstrate an industry standard. The printout from the Golf Course Superintendents Association of America (GCSAA) states that: "Golf course superintendents typically hold a bachelor's degree in a field related to agronomy or horticulture, or a degree from an intensive, two-year turfgrass management program." As such, GCSAA

indicates that an associate's degree is acceptable for the position of golf course superintendent.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.