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U.S. Department of Justice

Immigration and Naturalization Service

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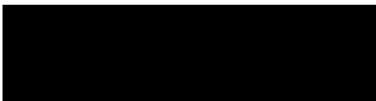
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-00-099-52292 Office: Vermont Service Center

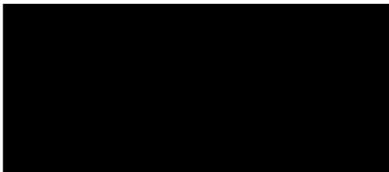
Date: 18 DEC 2002

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)

IN BEHALF OF PETITIONER:



**Identifying data deleted to
prevent identity information
invasion of personal privacy**

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, 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 sustained.

The petitioner is a private game and wildlife farm preserve with three employees and a stated gross annual income in excess of \$250,000. It seeks to extend the employment of the beneficiary as a wildlife reserve manager 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 and additional documentation.

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 determined that the level and nature of the activities on the petitioner's wildlife reserve farm did not warrant the services of a professional wildlife reserve manager. On appeal, counsel argues that the duties of the offered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel asserts that the Service has abused its discretion in denying the H-1B visa extension where it had previously approved a petition for the same position on behalf of this beneficiary. Counsel contends that the Service failed to elucidate a rational basis for the departure from its prior decision to approve the previous petition. Counsel cites the holding reached in Tapis International v. INS, 94 F. Supp. 2d 172 (D. Mass. 2000), to support the assertion that the Service had abused its discretion in denying the extension of the visa.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The Service considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Manage the care of grounds, woods, farm animals and game on a semi-wild-life [sic] shooting preserve of 265 acres.

The following description of the offered job was provided in a separate letter that accompanied the subsequent filing of the amended petition:

- * General management of farm business including caring and maintaining the property; raising birds and wildlife; selecting farms of vegetation and crops; selecting pesticide; ensuring effective operation of farm and management _____ 60%
- * Breed and raise 1,500 quails and 2,500 pheasants _____ 7.5%
- * Plant, cultivate and maintain over 50 acres of crops _____ 7.5%
- * Manage and supervise the farm assistant in building bird aviaries for game birds _____ 5%
- * Design and build clay shooting range _____ 5%
- * Organize and supervise 14 shooting events on farm _____ 5%
- * Plan and organize the building of a new pole barn _____ 5%
- * Manage wildlife permits and safety supplies _____ 5%

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.

A review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 47-50, finds no exact match for the position of a wildlife reserve manager under the occupation category of "Farmers, Ranchers, and Agricultural Managers." However, the duties of the offered job are analogous to those of a manager of an aquaculture farm. The Handbook provides the following description of the operations of such an enterprise at page 47:

Aquaculture farmers raise fish and shellfish in marine, brackish, or fresh water, usually in ponds, floating nets, raceways, or recirculating systems. They stock, feed, and protect, and otherwise manage aquatic life sold for consumption or used in recreational fishing.

While the petitioner's operations focus primarily on the raising of game birds utilized for recreational hunting, the similarity of the activities of a wildlife reserve and an aquaculture farm raising aquatic life used in recreational fishing is overwhelmingly evident. The Handbook indicates that a bachelor's degree in business with a concentration in agriculture, or related degree, is important. In addition to a formal education, several years of work experience in the different aspects of farm and ranch operations are needed in order to qualify for an agricultural manager position. Furthermore, the Handbook notes that an agricultural manager working for an absentee owner on a small enterprise may assume responsibility for all the day-to-day functions of that enterprise. The Handbook states:

Not all agricultural managers grew up on farms or ranches. For these people a bachelor's degree in business with a concentration in agriculture is important. In addition to formal education, they need several years of work experience in the different aspects of farm and ranch operations in order to qualify for an agricultural manager position.

...Completion of a 2-year degree, and preferably a 4-year bachelor's degree program in a college of agriculture is becoming increasingly 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.

Clearly, formal education is becoming increasingly, if not equally, important to significant work experience for an agricultural manager position. It is noted that not all agricultural manager positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity and so unique in nature as to require a baccalaureate degree in a

specialized and related area. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

The record indicates that the beneficiary received a Full Technological Certificate from the City and Guilds of London Institute in 1970, after attending the Hertfordshire College of Agriculture in St. Albans, England from 1967 to 1970. The beneficiary's education has been determined to be the equivalent of two-year associate's degree in agriculture with concentration in park organization and management as awarded at an institution of higher learning in the United States.

The beneficiary also received certificates from post-secondary training institutes attesting to the successful completion of courses from the Agricultural Training Board in Instructional Techniques, Chain Saw Maintenance and Operation, Field Crop Sprayer, Safe Handling of Pesticides, and First Aid. In addition, the record reflects that the beneficiary has over seventeen and one-half years of relevant employment experience as the farm/estate manager of Moulton Manor Farm Ltd., in Newmarket, England. The beneficiary's education, training, and work experience have been equated to a bachelor's degree in management with a specialty in agriculture as awarded at an institution of higher learning in the United States. Therefore, the beneficiary is qualified to perform the duties of this 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.