



*DR*

U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
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Washington, D.C. 20536



**NOV 19 2002**

File: EAC-01-233-60188 Office: Vermont Service Center Date:

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:



**PUBLIC COPY**

**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*  
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 dismissed.

The petitioner is primarily engaged in the management and maintenance of residential and commercial lawns. It has 14 employees and a gross annual income of \$700,000. It seeks to employ the beneficiary as an operations manager for a period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a letter from the petitioner's owner and president.

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 demonstrated that the proffered position requires a baccalaureate degree. On appeal, the petitioner's owner and president submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as an operations manager. The petitioner's owner and president also submits a photocopy of the beneficiary's Pesticide License and Certificate issued by the Department of Food and Agriculture, Commonwealth of Massachusetts.

The petitioner's additional evidence 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:

. . . manage and supervise all phases of lawn care operation including material purchases, service and customer relations. Hire, train, assign duties, schedule work, evaluate job performances, discipline and terminate technicians in accordance with company procedures and

policy. Reconcile work orders to numbers report daily from technicians on completed work & making sure levels are mai[n]tained. Prepare report on production totals; monitor levels on material to prevent theft or misuse; order and receive materials as needed; direct and participate in customer service functions such as sales, billing and service conditions.

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 the petitioner and counsel's argument that the proffered position would normally require a bachelor's degree in agriculture or a related field. The proffered position is similar to that of a grounds manager. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 303, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a grounds manager. The Professional Grounds Management Society (PGMS) offers certification to grounds managers whom have a combination of 8 years experience and formal education beyond high school, and pass an examination covering subjects such as equipment management, personnel management, environmental issues, turf care, ornamentals, and circulatory systems. The PGMS also offers certification to groundskeepers who have a high school diploma or equivalent, plus two years of experience in the grounds maintenance field. Thus, 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 such as agriculture, for the offered position. 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. 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 record contains various letters from individuals involved in the lawn care business. None of the individuals, however, state that the usual requirement for positions such as the proffered position is a baccalaureate degree in agriculture or an equivalent thereof. Rather, it appears that a baccalaureate degree is a preference rather than a requirement. One writer states, in part, that: "A number of [REDACTED] owners employ operation or service managers who have an associate or bachelors degree in agriculture." Such letters are insufficient evidence of an industry standard demonstrating the requirement of a baccalaureate degree in agriculture or an equivalent thereof.

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.