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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File: WAC-02-214-52136 Office: California Service Center

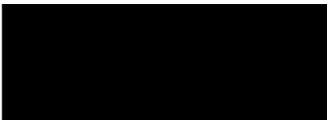
Date: **NOV 22 2002**

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:



**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, 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 winemaking business with 48 employees and a gross annual income of \$9.67 million. It seeks to employ the beneficiary as a winemaker I for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that the position of assistant winemaker requires a baccalaureate degree. The director further found that the beneficiary's educational background in hotel/catering administration is unrelated to the proffered position. On appeal, counsel states, in part, that both the senior and assistant winemaker who will work above and below the beneficiary both have a related bachelor's degree. Counsel also states that the proposed duties are so specialized and complex that a baccalaureate degree or an equivalent is required. Counsel further states that the beneficiary's educational background has been evaluated and found to be equivalent to a bachelor of enology/fermentation science degree from an accredited college or university in the United States.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary holds a diploma in hotel and catering administration conferred by a technology institute in New Zealand, which included a course called "Certificate in Wine." The beneficiary also holds a correspondence certificate in wine production from another technology institute in New Zealand, and he completed a certificate wine course examination at a wine academy in South Africa. The record also indicates that at the time of the filing of the instant petition, the beneficiary had over six years of relevant employment experience. The record contains evaluations from a credentials evaluation service and from an academic expert with authority to grant college-level credit for enology coursework at Oregon State University, which has a program within the Food Science curriculum emphasizing instruction in fermentation science. Both evaluators find that the beneficiary has earned the equivalent of a four-year bachelor of science degree in enology/fermentation science from an accredited U.S. university through a combination of his formal training and his professional experience. The evaluations appear reasonable and will be accepted. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

The term "specialty occupation" is 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.

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

. . . [The beneficiary] will be under general direction to coordinate & review [REDACTED] winemaking operations and the quality assurance. He will work with the winemaking/viticulture team to produce the [REDACTED] wine, including, but not limited to, field sampling, harvesting and reception of grapes, fermentation, aging, finishing and bottling. He will assist in key picking decisions, harvest schedule, experiments, and the barrel program. He will work with the team on blending decisions and assist in the development of procedural & quality control manuals.

In addition, in the initial I-129 petition, counsel described the duties of the offered position, in part, as follows:

During August through October, 100% of the Winemaker I's duties and responsibilities are focused on the harvest. The Winemaker I regularly and continually checks the sugar and acid level of the grapes and determines when they should be picked . . . Winemaker I will be required to make the decision as to when the batches need to be blended again and when to place them in either French or California Oak barrels.

Then, during December through February, the Winemaker I will have to regroup and will spend 100% of his time planning for the next season, education, seminars, vacation, training, and getting ready for the mixing and bottling. From February to August, the Winemaker I will devote 100% of his duties to mixing and bottling and planning for the next harvest. During April, the Winemaker I determines the blends and does taste tests to get the right texture and taste of the wines that is required. The Winemaker I through his experience and skills determines how to blend the vintages, which vintages to blend and thereafter, assess the blend reports to achieve the right high quality wine. At DWC, red wines are normally held for 16 to 18 months; thus, during this time, the red wines determined to be ready are blended to create DWC's signature wines. The Winemaker I is pivotal during this process.

The proffered position is similar to that of an agricultural and food scientist. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at pages 217-218, finds that a bachelor's degree in agricultural science is sufficient for working some jobs in applied research or for assisting in basic research, but a master's or doctoral degree is required for basic research. Degrees in related sciences such as biology, chemistry, or physics or in related engineering specialties also may qualify persons for some agricultural science jobs. 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 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.