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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, NW  
Washington, D. C. 20536



FILE: WAC 00:021 50807 Office: CALIFORNIA SERVICE CENTER

Date: DEC 16 2003

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)

ON BEHALF OF PETITIONER:



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 Citizenship and Immigration Services (CIS) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a beekeeping and pollination business. It employs 25 people and has a gross annual income of \$1,000,000. It seeks to temporarily employ the beneficiary as a bee production manager for a period of three years. The petitioner seeks a change of status for the beneficiary from a B-1 classification to an H1-B classification. The director determined that the petitioner had not established that the position is a specialty occupation or that the beneficiary is qualified for a specialty occupation.

On appeal, counsel asserts that the director erred in determining that the position is not a specialty occupation and that the beneficiary is not qualified for the position.

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 an occupation 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 field 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.

The first issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the California Service Center on November 1, 1999, counsel described the duties of the proffered position:

The job duties will include management and preparation of bee colonies, including the movement of hives to pollination area; management and operation of queen bee and bee production; examination of hives for disease and African honeybee tendencies and treating or destroying diseased hives. He will also manage a staff of 10 beekeepers and trainees, conduct instrumental insemination of breeder stock and assume other organizational duties.

In the March 30, 2000 response to the director's request for evidence, the petitioner provided additional information about the duties of the proffered position:

As a bee production manager [the beneficiary's] responsibilities are: To be able to meet and work with other apiary professionals, bee researchers, and supervise contractual professionals. To supervise crews who are unfamiliar with beekeeping and instructing them in methods of treatment, finding the queen bee, recognizing disease or infestation, basic hive behavior, and hive placement for the purpose of pollination. He will oversee three foremen who in

turn supervise approximately five people each. He will be required to establish contracts with customers for pollination, and oversee day-to-day operations.

This job also requires skills in personnel hiring and development, some computer skills, dealing with customers, understanding of budget and finance, purchasing equipment and vehicles, record keeping, a dedication to see a job through and persevere in difficult weather and circumstances.

The director determined that the position was not a specialty occupation based on the second position description. The director found that the position does not rise to the level of an agricultural scientist, because the duties, "[t]aken in their totality," appear to be general managerial duties rather than those of a specialty occupation.

The director, despite stating that the duties were taken in their totality, appears to have allowed the second description to replace the first, rather than integrating them into a single position.

On appeal, counsel states that the director's characterization is inaccurate, and refers to the Department of Labor's *Dictionary of Occupational Titles*, the *Occupational Outlook Handbook (Handbook)*, and a reference to the occupation in the regulations for what was the Immigration and Naturalization Service, and is now Citizenship and Immigration Services (CIS). Counsel asserts that because CIS has characterized an apiculturist to be a "professional level" occupation requiring a baccalaureate degree, for purposes of entering the country to engage in business activities under NAFTA, (8 C.F.R. 214.6(c), Appendix 1603.D.1), the occupation should also be characterized in the same manner for purposes of an H-1B classification. Although the agency has determined that this occupation is a profession requiring a baccalaureate degree for the purposes of NAFTA, for those purposes, there is no requirement that the degree be in a specific specialty as is required by Section 214(i)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1)(B) for the instant classification. Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *Dictionary of Occupational Titles*. However, the DOT is not considered a persuasive source of information regarding whether a particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation.

The current edition of the *Handbook* (2002-2003) does not include any reference to apiculture, which Webster's New Collegiate Dictionary defines as, "the keeping of bees esp. on a large scale." The 1998-1999 edition, however, which counsel submits on appeal, and which was timely at the time of appeal, lists apiculturists in the index, with a reference to "see: Agricultural scientists." In reviewing the information under the agricultural scientist listing on page 118 of the 1998-1999 edition, and page 216 of the 2002-2003 edition, it states, "Agricultural Scientists study farm crops and animals, and develop ways of improving their quantity and quality." While beekeeping does not clearly fall into this definition, it does correlate in terms of the critical role bees play in agriculture. According to the *Handbook* on page 218:

A bachelor's degree in agricultural science is sufficient for some jobs in applied research or for assisting in basic research, but a master's or doctoral degree is required for basic research. . . . Four-year degrees also may help person enter occupations such as farmer, or farm or ranch manager.

The proffered position clearly has elements of management that, taken alone, would not establish the position as a specialty occupation. In looking at the other duties, however, such as the primary care of the hives and the queen bee, the position is one of an apiculturist, which is related to an agricultural scientist, a profession that requires a baccalaureate degree. The proffered position is a specialty occupation.

The next issue is whether the beneficiary is eligible to perform this specialty occupation. 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.

As the proffered position is a bee production manager, the beneficiary must possess a baccalaureate degree, or its equivalent, in apiculture or entomology.

- 1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.**

The beneficiary does not hold a degree and, therefore, does not meet this criterion.

- 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.**

The beneficiary received a diploma in animal husbandry from The Home Study College of South Africa, but submitted no information that this degree would be equivalent to a United States baccalaureate degree in the specialty occupation.

- 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.**

This occupation does not require a State license, registration, or certification.

**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.**

This is the only criterion that the beneficiary could possibly meet. In considering whether the beneficiary qualifies under this category by virtue of his education, practical experience, and/or specialized training, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

[E]quivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Counsel submitted an evaluation of education and work experience from Globe Language Services, Inc., which states that the

beneficiary's 16 years of work experience are equivalent to a bachelor's degree in agricultural science (apiculture). It is noted that the Evaluation Report does not meet the standards of the regulations for determining equivalency. The Evaluation purports to determine that the beneficiary has the equivalent of a bachelor's degree in agricultural science (apiculture) as a result of his education, professional training and employment experience. Globe Language Services, Inc. is not qualified to prepare an evaluation of this sort as it does not: "[Have] authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience" as required by the regulation. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Globe Language Services, Inc. is qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." The evaluator determined that the beneficiary has the equivalent of a high school diploma. As discussed above, the diploma from The Home Study College was not specifically evaluated, but only added to the information regarding the beneficiary's work experience. The AAO does not accept the assessment of the beneficiary's work experience and other training, as Globe Language Services, Inc. is not qualified to make that assessment.

Counsel also submitted letters from a number of academics in the field stating that the beneficiary's experience and training are equivalent to a bachelor's degree. These individuals are not qualified to make this assessment for the same reasons explained above.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2), (3) or (4). The only category under which the beneficiary could qualify would be 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As cited above, one means of documenting the beneficiary's expertise is through recognition of that expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation.

Counsel submitted letters from: 1) [REDACTED] Ph.D., Apiculturist with the University of California; 2) [REDACTED] staff apiarist at Ohio State University; 3) [REDACTED]

Managing Director, Mountain Honey Farm, South Africa; 4) [REDACTED]  
[REDACTED] The American Beekeeping Federation, Inc.; 5) Prof.  
[REDACTED] Dean, Faculty of Biological and Agricultural  
Sciences, University of Pretoria, South Africa; 6) [REDACTED]  
Honeybee Section, Plant Protection Research Institute,  
Agricultural Research Council, South Africa; 7) [REDACTED]  
[REDACTED] Professor of Biology, Bucknell University; and 8)  
[REDACTED] Ph.D., bee research scientist.

All of these letters attested to the beneficiary's skills and abilities as a beekeeper and, in some cases, his ability in breeding. None of the letters, however, meet the terms of the regulations, as they lack detail and so do not:

[C]learly demonstrate[] that the aliens' training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Pursuant to the regulations, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentation referenced at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v). Counsel did not submit any evidence to support the beneficiary's eligibility under this regulation other than these letters, which are considered under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i), and which do not contain sufficient documentation.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.