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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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



File: LIN-02-104-52892 Office: Nebraska Service Center

Date: **MAR 19 2003**

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)

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 the Bureau of Citizenship and Immigration Services (Bureau) 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a family farm with 40 employees and a gross annual income of \$3,274,246. It seeks to employ the beneficiary as a crop production quality 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined 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, or that the proposed duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate degree. On appeal, counsel states, in part, that the record contains opinions from industry experts that corroborate her claim that the proffered position is a specialty occupation. She also states that the record contains numerous job advertisements to demonstrate that the degree requirement is industry wide. She further states that the Department of Labor (DOL) in its *Occupational Outlook Handbook (Handbook)* and its *Dictionary of Occupational Titles (DOT)* has determined that the proffered position is a specialty occupation.

Counsel's additional information on appeal is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The crop production quality manager is responsible for crop quality management, especially in the area of our

cut flower production. The position is also responsible for analysis of production and post harvest systems.

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 Bureau does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in agriculture or a related field. Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL's *DOT* (4th Ed., Rev. 1991). 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 DOL 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 DOL's *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. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

In its *Handbook*, 2002-2003 edition, at page 48, the DOL finds that for agricultural managers who did not grow up on farms or ranches, a bachelor's degree in business with a concentration in agriculture is important. The petitioner has not, however, persuasively established that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary for reasons that will be discussed herein.

Second, although the petitioner states that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as agriculture, for the offered position, the record contains no corroborating evidence, such as copies of degrees and/or transcripts of the employees who have held the proffered position. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Third, although the record contains various job advertisements, none of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. It is noted that three out of the four advertisements do not specify that a baccalaureate degree, as opposed to an associate degree, is required; rather, they specify only "a degree in horticulture." 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 a letter dated March 25, 2002, from an academic expert, David G. Adams, Ph.D., who states, in part, as follows:

The vast majority of individuals heading up the harvesting and packaging systems in similar companies either have Associate Degrees from Community Colleges that teach Horticulture; have B.S. degrees from 4 year schools like Oregon State University; or have many years experience dealing with these very perishable products. (Emphasis added.)

The record contains a letter dated April 24, 2002, from another academic expert, [REDACTED] Professor of Horticulture, who states, in part, as follows:

. . . the major nurseries in Oregon with IPM [Integrated Pest Management] or PHC [Plant Health Care] positions require the minimum of a bachelor's degree. . .

In the Oregon nursery industry, Iverson Family Farms is considered to be a major nursery.

The record contains a letter dated April 30, 2002, from another academic expert, who states, in part, as follows:

Iverson Family Farms is one of the largest flower bulb growers in the PNW. Based on my review of the position description and my knowledge of production and pest management issues associated with the production of high quality flower bulb crops, it is my opinion that the Crop Production Quality Manager position would require a minimum of a Bachelors degree in agriculture or horticulture.

In his decision the director included the portion of Dr. Adams expert opinion where he stated that an associate degree is acceptable for the proffered position. Counsel, however, does not address this issue on appeal. It is noted that Dr. Adams' finding that an associate degree is acceptable for the proffered position conflicts with the opinions of the other two academic experts. No explanation, however, has been provided to address this discrepancy. Doubt cast on any aspect of the petitioner's proof may lead to a re-evaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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.