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

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536



File: EAC 03 074 52926 Office: VERMONT SERVICE CENTER Date:

**SEP 04 2003**

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

**Identifying data deleted to prevent clearly unwarranted disclosure of per...**

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 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.

*[Signature]*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director of the Vermont Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a vineyard and winery with two employees. It seeks to employ the beneficiary as a horticulturist for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a brief and additional documentation.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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 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 stated that, while the offered position of horticulturist is generally considered to be a specialty occupation, the beneficiary in this case would be performing the actual agricultural work himself rather than supervising agricultural workers in the fields. The director therefore

determined the petitioner had not shown that the majority of the beneficiary's duties are so specialized and complex as to require a baccalaureate degree in a specific specialty.

On appeal, the petitioner explains that the beneficiary would be supervising seasonal day laborers in the performance of agricultural work, not performing such work himself. The petitioner states that the beneficiary's day-to-day duties are so specialized and complex as to require the services of an individual with a baccalaureate degree in a specific specialty.

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:

Investigates to determine methods of producing and processing grapes. Experiments to develop different grape varieties having higher yield, quality, tolerance to disease, uses, or process. Determines best methods of planting, spraying, cultivating, harvesting, and processing grapes considering the environmental capability, and environment protection requirements. Specializes in the production, and processing of grapes.

In response to the director's request for additional evidence, the petitioner submitted the following, expanded description of the beneficiary's duties:

[The beneficiary] will perform numerous, vital everyday activities and spend approximately 50% of his time in the field and 50% of his time in the winery. . .

#### In the Vineyard

- Identify problems with grape production and wine growing.
- Research the growing problems in the vineyards and determine effective solutions.
- Oversee the drain tiling of the vineyards.
- Oversee the aeration of the soil.
- Develop the plans and build a "Ripper" which has a 3' blade to aerate the soil.
- Implements new pruning procedures.
- Set up and implement fungicide spray program.
- Determines the best method for attaching vines to the wires and oversees that process.
- Identify and oversee treatment of weed control in vineyards.
- Research the most appropriate ground cover to absorb moisture and increase aeration.
- Evaluate the success or failure of each change.
- Takes samples of grapes pre harvest to evaluate grape maturity.
- Report the results to owners.
- Communicates with wine-making consultant and inputs scheduling for harvest.

#### In the Winery.

- Serves as Technical Wine Maker of the [REDACTED]
- Sets up new laboratory and implements lab analysis.
- Evaluate/calculate and implement adjustments to the wine composition.
- Ensures quality control of product (example: the sterilizing of the barrels during the racking).
- Maintains the environment of the winery at optimal conditions such as temperature, sanitation, etc.
- Maintains all records of wine additions and movements according to the BATF regulations.

The field portion of the beneficiary's duties clearly involves research, analysis, and planning to improve the quality of the grapes rather than the performance of actual agricultural labor. On appeal, the petitioner explains the beneficiary will supervise seasonal day laborers in the performance of agricultural labor as part of his duties in the field.

In support of his statement that the offered position qualifies as a specialty occupation, the petitioner submits letters from owners and managers of six other Virginia wineries, all of whom state that Virginia wineries commonly require a bachelor's degree in viticulture or equivalent experience for parallel positions. The petitioner also submits letters from an industry consultant, a professor of viticulture at Virginia Polytechnic University, a Culpeper County Agriculture Extension Agent, and officials of the Culpeper Department of Economic Development and the Culpeper Chamber of Commerce. All of these individuals state that the requirement of a bachelor's degree in viticulture or equivalent experience is common to the Virginia wine industry for parallel positions. In view of the foregoing, it is concluded the petitioner has submitted sufficient evidence to show that the duties of the proffered position are so specialized and complex as to require a baccalaureate degree in a specific specialty. The petitioner has further shown that the requirement of a baccalaureate degree in a specific specialty is common to the industry in parallel positions among similar organizations. Therefore, the petitioner has shown that the proffered 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. Here, 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.