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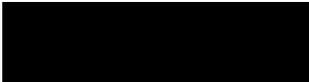
U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: EAC 02 047 50760 Office: VERMONT SERVICE CENTER Date: **MAR 10 2004**

IN RE: Petitioner:   
Beneficiary: 

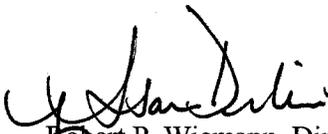
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a certified organic farm that currently produces eggs, lamb, pork, and vegetables. It endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b), so that it may employ him as a horticultural manager.

The director denied the petition because the petitioner had failed to establish that the proffered position was a specialty occupation. On appeal, counsel contends that evidence of record does not support the director's decision.

The AAO has determined that, based on the totality of the evidence in the record, the director's decision to deny the petition was incorrect.

The letter which the petitioner's manager provided in response to the RFE included the following points. Organic farming is a relatively new and emerging industry. Unlike conventional farming, this industry does not involve the use of chemical fungicides, pesticides, and fertilizers. Accordingly, a horticultural manager on an organic farm must apply scientific understanding not required on a conventional farm, namely, an understanding of the relationship of biological systems and how they interact to produce a productive harvest.

According to the manager's RFE reply, the beneficiary's duties will be divided as follows: (1) determining the best methods for the organic production of tomatoes, onions, watermelon, sweet corn, and possibly other vegetables and fruits; (2) experimenting with organic growing of fruits and vegetables to produce higher yield, quality, nutritional value, disease resistance, and adaptability to Virginia's soil and climate; (3) assisting in the planning and construction of a new greenhouse dedicated to the production of new agricultural products; and (4) assisting in the marketing of organic farm products.

Counsel's brief concentrates upon the letters from four witnesses that counsel had submitted, along with a letter from the petitioner, in response to the RFE. The director did not address these documents, and counsel correctly notes that the tenor of the decision suggests that they may have been overlooked. The authors were: two extension agents employed by the Virginia Cooperative Extension, an agricultural training and education service of Virginia Tech, Virginia State University, the U.S. Department of Agriculture, and the state and local governments; the operator of another organic farm; and a person who has owned and operated an organic farm and now sells supplies to organic farms.

The combination of the four letters establishes that the proffered position requires highly specialized knowledge in organic crop production in general and in related areas such as soil and plant science, insecticide-free pest control, soil-borne pathogens, soil composition, soil ph, and "soil amendments (which can be used to increase fertility)."

The letters also support the proposition that performance of the proffered position requires a bachelor's degree or higher in a specific specialty. The former organic farmer, who has been involved with organic farming for over 30 years, opined that this particular position "requires, at a minimum, a bachelor's degree in a field of agricultural studies or equivalent knowledge or training."

The extension agent with nearly ten years of experience wrote:

I have reviewed the job duties for the Horticultural Manager position as described by Double H Farm to the INS. To perform the described duties I believe one would need a bachelor's degree in horticulture, agronomy and/or agricultural economics, or have acquired equivalent knowledge and training from practical experience.

The extension agent with approximately 20 years of experience did not contradict the other letters, but his assessment of the educational requirement was not as clear. He stated, in pertinent part, "I do not believe that these tasks could be performed without college-level education and training." He did, however, comment that specific college-level courses taken by the beneficiary "involve knowledge needed to perform the tasks of Horticultural Manager on an organic farm."

The present owner of an organic farm endorsed the need for a bachelor's degree in an agricultural field by writing:

I have reviewed the job duties of the Horticultural Manager as described in the materials submitted to the Immigration and Naturalization Service. Based on that review and my knowledge of the industry and its requirements, I believe that one could not perform these job duties unless one received a baccalaureate in a field of agricultural studies from a U.S. University or equivalent training and experience.

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.

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 totality of the evidence establishes that the proffered position qualifies under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), that is, as one whose specific duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The AAO also finds that the evidence has established that the beneficiary is qualified to serve in the particular specialty occupation proffered by the petitioner. The foreign-degree evaluation by The Knowledge Company established that the beneficiary holds the equivalent of a U.S. bachelor's degree in Agricultural Economics. Furthermore, based upon the translated information about the associated coursework, it appears that the degree is in a specific specialty directly related to the duties that the beneficiary shall have to perform. Therefore, the beneficiary is qualified to serve in the relevant specialty occupation in accordance with the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 satisfied that burden. Accordingly, the AAO shall withdraw the director's decision and sustain the appeal.

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.

**ORDER:** The appeal is sustained. The petition is approved.