



U.S. Citizenship  
and Immigration  
Services



FILE: EAC 02 007 53580 Office: VERMONT SERVICE CENTER Date: **1007** 1 11 04

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

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

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

The petitioner provides exterminating services. It seeks to employ the beneficiary as an exterminator. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel states that the proffered position qualifies as a specialty occupation.

Section 214(i)(1) of 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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an exterminator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary's duties would entail conducting inspections; surveying problems and relaying solutions for integrated pest management by determining the most appropriate procedures to eliminate the pest problem; and monitoring results. The petitioner's September 21, 2001 letter stated that a candidate for the proffered position must have "at least a [b]achelor's degree in [a]rts or a related field" plus extensive experience.

The director found the evidentiary record did not establish that the proffered position qualified as a specialty occupation under the Act.

On appeal, counsel claims that the proffered position is a specialty occupation. Counsel narrates the duties of the proffered position, and states that the *Occupational Information Network (O\*Net)* reports that the occupation of pest control worker may require an associate's or bachelor's degree. Counsel states that the Department of Labor's *Occupational Outlook Handbook (Handbook)* points out that a high school diploma or equivalent is the minimum qualification for most pest control jobs, and that although a college degree is not required nearly half of all pest control workers have either attended college or have earned a degree. Counsel emphasizes that the beneficiary will be a front-line exterminator supervisor, as defined in the *Dictionary of Occupational Titles (DOT)*, and will therefore require a bachelor's degree. Counsel narrates the *Handbook's* description of a pest control supervisor, stating that a pest control supervisor is not only licensed to apply pesticides, but is also involved in running the business. Counsel mentions that a supervisory position requires a four-year bachelor's degree due to its complexity and uniqueness. Counsel reports that the beneficiary will correspond with certain government agencies and must adhere to statutory requirements. Counsel contends that the beneficiary will train and supervise 12 exterminators. Counsel claims that the bachelor's degree requirement is common in the industry, and that the beneficiary's duties are specialized and complex. Finally, counsel describes the abilities and knowledge that a candidate must possess to perform the duties of the proffered position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms

"routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum requirement for entry into the occupation as required by the Act.

Counsel asserts that the proffered position is a specialty occupation based on the information contained in the *DOT*, the *O\*Net*, and the *Handbook*. This assertion is not persuasive. The *DOT* and the *O\*Net* are not persuasive sources of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum requirement for entry into the occupation. 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 and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information in the publications. In an aside, the AAO notes that neither the *DOT* nor the *O\*Net* state that employers require candidates to possess a bachelor's degree in a specific specialty.

A review of the *Handbook* reveals that the duties of the proffered position are indeed performed by a pest control supervisor, and that employers do not require a bachelor's degree for this occupation. A pest control supervisor is required to pass a state-administered exam and have at least two years of experience in the industry. Consequently, the *Handbook* reveals that the offered position would not qualify as a specialty occupation because a baccalaureate or higher degree or its equivalent is not the normal minimum requirement for entry into the particular position, exterminator.

No evidence in the record establishes the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or the proffered position is so complex or unique that it can be performed only by an individual with a degree. Although counsel claims that the petitioner established the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), no evidence in the record establishes this criterion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the petitioner fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

There is no evidence that would establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A); namely, that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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. As already discussed, the beneficiary's duties resemble those performed by a pest control supervisor, a position that does not require a bachelor's degree in a specific specialty. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.