

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D2



FILE: LIN 04 088 51403 Office: NEBRASKA SERVICE CENTER Date: AUG 24 2005

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 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 operates a farm. He seeks to employ the beneficiary as a soil conservationist and endeavors to classify her 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 stating that the proffered position does not qualify as a specialty occupation. On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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.

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 are 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) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a soil conservationist. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Plan and develop coordinated practices for soil erosion control, moisture conservation, and sound land use of the farm by applying principles of agronomy, soil science, forestry, or agriculture to achieve objectives of conservation;
- Manage and maintain diverse farmland, cropland, and soil conditions through the use of soil and water conservation methods;
- Provide a system of soil testing and analysis for tobacco customer requirements in conjunction with development of an expanded customer base;
- Design and implement an alley cropping system combining regionally native trees and shrubs with summer and fall farm crops of tobacco, soybeans, corn or wheat to reduce surface water runoff and erosion, improve utilization of soil nutrients, and improve environmental conditions;
- Establish practices and procedures for experimental crop growth; and
- Assist in the construction of proper soil erosion and/or windbreak buffer systems to improve cropland and environmental stability and integrity.

The petitioner requires a minimum of a bachelor’s degree in agronomy, crop or soil science, agricultural science, forestry or a related field for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties

of the proffered position appear to be those noted for conservation scientists and foresters (soil and water conservationists) in the *Handbook*. Those occupations are discussed as follows in the *Handbook* as follows:

Soil and water conservationists provide technical assistance to farmers, ranchers, forest managers, State and local agencies, and others concerned with the conservation of soil, water, and related natural resources. They develop programs for private landowners designed to make the most productive use of land without damaging it. Soil conservationists also assist landowners by visiting areas with erosion problems, finding the source of the problem, and helping landowners and managers develop management practices to combat it. Water conservationists also assist private landowners and Federal, State, and local governments by advising on a broad range of natural resource topics- specifically, issues of water quality, preserving water supplies, groundwater contamination, and management and conservation of water resources.

The *Handbook* notes that nearly one-third of all conservation scientists and foresters were employed by the Federal Government. Another 20 per cent worked for State governments and 10 per cent for local governments. The remainder worked in private industry, mainly in support activities for agriculture and forestry or in wood product manufacturing. Some were self-employed as consultants for private landowners, government, and forestry-related businesses. The duties of the proffered position, as described by the petitioner, are consistent with those noted for soil conservationists in the *Handbook* and will be performed in a farming operation, which is also consistent with the occupation. The *Handbook* notes that a bachelor's degree in forestry, range management, or a related discipline is the minimum educational requirement for careers in forestry or conservation science. The position is, therefore, a specialty occupation as it meets the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The final issue to be discussed is whether the beneficiary is qualified to perform the duties of a specialty occupation. The director did not discuss this issue as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The record indicates that the beneficiary's foreign education is equivalent of a bachelor's degree in forestry with a specialization in agroforestry entrepreneurship from an accredited college or university in the United States. This determination was made by a credentials evaluation service. A review of the beneficiary's transcripts confirms that she has substantial coursework directly related to the duties of the offered position. As such, the beneficiary is qualified to perform the duties of the proffered position. 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 sustained that burden and the appeal shall accordingly be sustained.

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