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U.S. Citizenship
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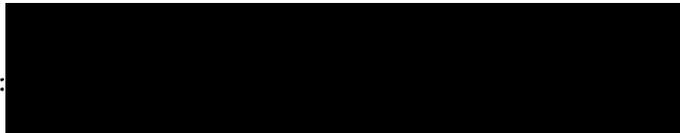


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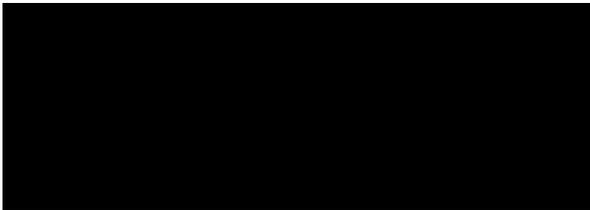
FILE: EAC 02 220 50719 Office: VERMONT SERVICE CENTER Date:

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 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 is a banana orchard that seeks to employ the beneficiary as an orchard manager. 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 submits a brief and additional and previously submitted evidence.

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 orchard manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail preparing the greenhouse to reproduce the tissue culture of a banana; using chemical, organic matter, and solid waste for fertilizer; supervising the design and installation of an irrigation system; preparing the soil and performing soil analysis; overseeing the cableway system for conveying harvested bananas; and training a farm supervisor and farm hands in the above duties. The petitioner stated that a candidate must possess a bachelor's or higher degree in agronomy or agricultural sciences or the equivalent.

The director determined that the proffered position was not a specialty occupation. According to the director, because the beneficiary does not possess an official degree, a person with less than 12 years of experience might qualify to perform the proffered position's duties. The director referred to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) to state that the classification entitled "agricultural and food scientists" reveals that training is dependent on the specialty and the work to be performed, and often employers require a bachelor's degree in agricultural science. The director found that because the submitted evidence did not establish a company or industry-wide standard of employing candidates with a baccalaureate degree for similar positions, the director could not conclude that the proffered position is a specialty in scope. Finally, the director concluded that the beneficiary's duties did not appear to be of such complexity as to require the theoretical and practical application of a body of highly specialized knowledge.

On appeal, counsel states that the proposed occupation is a specialty occupation. Counsel contends that growing banana plants from tissue culture is different from growing bananas in an ordinary plantation. Counsel refers to a letter from Rahan Meristem to show that using tissue culture to grow bananas requires highly specialized knowledge to ensure successful cultivation, and counsel asserts that a candidate must possess a degree in agronomy, agricultural sciences, or the equivalent.

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 for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* discloses that the duties of the proffered position do not rise to the level of those performed by agricultural and food scientists. The *Handbook* reports:

The work of agricultural and food scientists plays an important part in maintaining the Nation's food supply by ensuring agricultural productivity and the safety of the food supply. Agricultural scientists study farm crops and animals, and develop ways of improving their quantity and quality. They look for ways to improve crop yield with less labor, control pests and weeds more safely and effectively, and conserve soil and water. They research methods of converting raw agricultural commodities into attractive and healthy food products for consumers.

The *Handbook* continues:

In the past two decades, rapid advances in basic biological knowledge related to genetics spurred growth in the field of biotechnology. Some agricultural and food scientists use this technology to manipulate the genetic material of plants and crops, attempting to make organisms more productive or resistant to disease. . . .

Many agricultural scientists work in basic or applied research and development. Others manage or administer research and development programs, or manage marketing or production operations in companies that produce food products or agricultural chemicals, supplies, and machinery. Some agricultural scientists are consultants to business firms, private clients, or government.

The petitioner's June 12, 2002 letter indicated that the beneficiary will "improve crop yield and quality with less labor," "control pests and weeds more safely and effectively," "conserve soil and water resources," and "supervise and help meet consumer demand for food products that are healthful, safe, palatable and convenient." Yet, no corroborating evidence in the record demonstrated that the beneficiary will perform the duties of an agricultural and food scientist as described in the *Handbook*. The beneficiary will not perform research methods to convert raw agricultural commodities into food products for consumers, manipulate the genetic material of plants and crops to make organisms more productive or resistant to disease, work in or manage basic or applied research and development, manage or administer research and development programs, or manage marketing or production operations in companies that produce food products or

agricultural chemicals, supplies, and machinery. In fact, the evidentiary record reveals that the petitioner will use the tissue culture developed by Rahan Meristem.

The AAO finds that the beneficiary's duties are a combination of those performed by agricultural workers (farmworkers and laborers) and agricultural managers. The *Handbook* indicates:

Farmworkers and laborers, crop, nursery, and greenhouse perform numerous activities related to growing and harvesting grains, fruits, vegetables, nuts, fiber, trees, shrubs, and other crops. Among their activities are planting and seeding, pruning, irrigating, harvesting, and packing and loading crops for shipment. Farmworkers also apply pesticides, herbicides, and fertilizers to crops; repair fences; and help with irrigation. Nursery and greenhouse workers prepare land or greenhouse beds for growing horticultural products, such as trees, plants, flowers, and sod. Their duties include planting, watering, pruning, weeding, and spraying the plants. They may cut, roll, and stack sod; stake trees; tie, wrap, and pack plants to fill orders; and dig up or move field-grown and containerized shrubs and trees.

The petitioner stated that the beneficiary will prepare soil beds in a greenhouse and use chemical, organic matter, and solid waste for fertilizer. These duties do not require highly specialized knowledge because they are performed by agricultural workers and laborers. According to the *Handbook*, farmworkers learn through short-term on-the-job training. Most do not have a high school diploma.

The *Handbook* reveals that some agricultural workers may become farm, ranch, and other agricultural managers, or farmers or ranchers themselves. The *Handbook* describes agricultural managers as follows:

Agricultural managers manage the day-to-day activities of one or more farms, ranches, nurseries, timber tracts, greenhouses, and other agricultural establishments for farmers, absentee landowners, or corporations. Their duties and responsibilities vary widely, but are concentrated on the business aspects of running a farm. On small farms, they may oversee the entire operation, while on large farms they may oversee a single activity, such as marketing. Agricultural managers usually do not perform production activities; instead they hire and supervise farm and livestock workers, who perform most of the daily production tasks. In these cases, managers may establish output goals; determine financial constraints; monitor production and marketing; hire, assign, and supervise workers; determine crop transportation and storage requirements; and oversee maintenance of the property and equipment.

The petitioner stated that the beneficiary will supervise the design and installation of an irrigation system, prepare the soil and perform soil analysis, oversee the cableway system for conveying harvested bananas, and train a farm supervisor and farmworkers. Because agricultural managers oversee the entire operation on a small farm including "maintenance of the property and equipment" and hiring and supervising farm workers, these duties would be performed by an agricultural manager.

The *Handbook* reveals that the proffered position's duties are performed by agricultural workers and managers, occupations that do not require a bachelor's degree in a specific specialty. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, orchard manager.

There is no evidence in the record that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* discloses that the proffered position's duties are performed by agricultural workers and managers, occupations that do not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): 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. The letter from Rahan Meristem did not indicate that a candidate for the proposed position must possess a bachelor's degree in agronomy, agricultural sciences, or the equivalent. Rather, the letter stated that the beneficiary should occupy the proposed position because he has prior experience overseeing a Rahan Meristem project in Puerto Rico. No evidence in the record establishes 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 in a specific specialty.

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.