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U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 180 51487 Office: NEBRASKA SERVICE CENTER Date: FEB 28 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:
[Redacted]

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 grower and retailer of greenhouse and outdoor plant and nursery stock. It seeks to employ the beneficiary as a land resource scientist and 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 stating that the proffered position does not qualify as a specialty occupation. On appeal counsel states 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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a land resource scientist. 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: 35 per cent of the time - evaluate soil conditions in various building structures as well as outdoor growing areas; 20 per cent of the time - plan utilization of those areas for stock to be grown; evaluate various hydration, temperature, and atmospheric conditions to optimize growing conditions for many different types of perennials and annuals; 20 per cent of the time – after analysis of various soil and atmospheric conditions, choose the best structure available, providing a specific plan on ways to modify soil and atmospheric conditions to best enhance the growth and vitality of chosen stock, while modifying and altering structure set-up from season to season and year to year; 15 per cent of the time – mechanical installation of systems and overseeing appropriate maintenance and ongoing use of systems; and 10 per cent of the time – train and instruct maintenance staff on the proper methods to use in evaluating the health and viability of plant stock, and to educate staff on how the utilization of appropriate measures of irrigation, fertilization, and temperature control might affect the health of plant stock. The petitioner states that the position can only be filled by an individual with expertise developed through an appropriate college-level curriculum of agricultural and environmental related courses.

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 farmers, ranchers, and agricultural managers in the *Handbook*. Those occupations are discussed as follows in the *Handbook* as follows:

Farmers and ranchers own and operate mainly family-owned farms. They may also lease land from a landowner and operate it as a working farm. The type of farm they operate determines their specific tasks. On crop farms- farms growing grain, cotton, and other fibers, fruit, and vegetables-farmers are responsible for planning, tilling, planting, fertilizing, cultivating, spraying, and harvesting. After the harvest, they make sure the crops are properly packaged, stored, or marketed. Livestock, dairy, and poultry farmers must feed, plan, and care for the animals and keep barns, pens, coops, and other farm buildings clean and in good

condition. They also oversee breeding and marketing activities. **Horticultural specialty** (emphasis added) farmers oversee the production of ornamental plants, nursery products-such as flowers, bulbs, shrubbery, and sod-and fruits and vegetables grown in greenhouses. . . .

Farmers and ranchers make many managerial decisions. Their farm output is strongly influenced by the weather, disease, fluctuations in prices of domestic and foreign farm products, and Federal farm programs. In a crop operation, farmers usually determine the best time to plant seed, apply fertilizer and chemicals, harvest, and market. They use different strategies to protect themselves from unpredictable changes in the markets for agricultural products. . . .

The *Handbook* further notes that modern farming requires increasingly complex scientific, business, and financial decisions. Even individuals with substantial experience or who were raised on family farms must acquire appropriate education. Although individuals reared on family farms may adequately perform in some farming operations today with a two-year agricultural degree, a baccalaureate level education is becoming increasingly important. The *Handbook* also notes that a bachelor's degree is important for agricultural managers who were not raised on family farms. In this instance, the petitioner is a commercial grower of greenhouse and outdoor plant and nursery stock with 15 employees, and a gross annual income exceeding \$600,000. In addition to its outdoor growing areas, the petitioner operates some 14 greenhouses. The petitioner also grows European flower stock not indigenous to its geographical location, which requires specialized knowledge for production and maintenance of the product since soil requirements and atmospheric conditions will differ for those flowers from the stock normally produced in the petitioner's geographic area. While a baccalaureate level education may not yet be a standard minimum requirement for entry into the proffered position, such a requirement for the position is a reasonable requirement for the petitioner, and in the industry under the facts of this case, due to the scope of business operations and complexity of the duties involved. The position is, therefore, a specialty occupation in that the nature of the position's duties is so specialized and complex that knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The petitioner has established the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 possesses the equivalent of a bachelor's degree in land resource sciences from an accredited college or university in the United States as determined by Kayla J. King, an educational credentials evaluator with the Foundation for International Services, Inc. A review of the beneficiary's transcripts confirms that he 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.