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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 242 50127 Office: CALIFORNIA SERVICE CENTER Date: FEB 23 2005

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 petitioner is a winery that seeks to employ the beneficiary as an assistant winemaker. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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.

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 assistant winemaker. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 20, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would

perform duties that entail: examining grape samples to determine presence and extent of such factors as sugar and acid content, and ripeness; deciding in collaboration with the winemaker when the grapes should be picked; coordinating the processes and directing the workers involved in testing and crushing grapes, fermenting juice, fortifying, clarifying, aging, and finishing of wine, including cooling, filtering, and bottling; and blending wines according to formulas, knowledge, and experience in winemaking. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in enology.

The director found that the proposed duties, which closely reflect the duties of farmers, ranchers, and agricultural managers in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, are not so complex as to require a baccalaureate degree. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that both the DOL and the California Employment Development Department recognize the position of assistant winemaker/enologist as an occupation that requires a related baccalaureate degree. Counsel states further that the beneficiary's supervisor holds the equivalent of a baccalaureate degree, based on more than 14 years of experience as a winemaker and enologist, and the petitioner's previous assistant winemakers held baccalaureate degrees. Counsel submits job postings as supporting documentation.

The offered position is that of an enologist. While the AAO normally consults the DOL's *Handbook* for information about the duties and educational requirements of particular occupations, that publication does not contain information about all jobs in the labor market, such as the position offered herein. The record, however, does contain labor market information from the California Employment Development Department about the duties and educational requirements of the proffered position. That information indicates that the normal requirement for entry into the position is a Bachelor of Science degree with a specialization in enology. The record also contains job advertisements that confirm that finding. In this case, the beneficiary holds a "Certificate for an Oenologist National Diploma" conferred by a French university and a "Higher Technician in Agriculture Diploma" with a specialty in viticulture and oenology issued by the French Republic Ministry of Agriculture and Forestry. An evaluation from a company that specializes in evaluating academic credentials indicates that the beneficiary holds the equivalent of a U.S. Bachelor of Science degree in oenology. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

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 director's order is withdrawn and the petition is approved.

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