



U.S. Citizenship
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FILE: EAC 04 190 50118 Office: VERMONT SERVICE CENTER

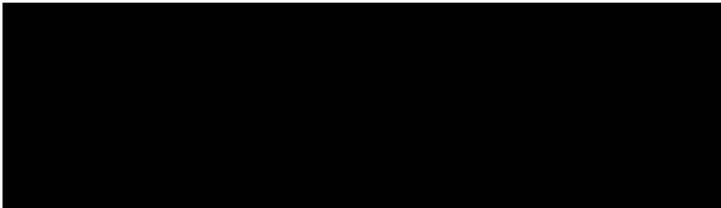
Date: JUN 28 2006

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, Chief
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 golf club that seeks to employ the beneficiary as an agronomist and to classify him 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 on the basis that the position was not a specialty occupation. On appeal, counsel submits a letter.

Counsel submitted a timely Form I-290B on November 23, 2004 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence. Therefore, the record is complete.

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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B and the petitioner's appeal letter. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, a golf club, is seeking the beneficiary's services as an agronomist. Evidence of the beneficiary's duties includes: the Form I-129 and letter of support from the petitioner. At the time of filing, the petitioner stated that the beneficiary's duties would entail, in part: conducting experiments and investigations on grasses, roots, and terrain; developing new methods of grass and plant growth to secure improved quality, durability, and adaptation to specific soils and climates, and resistance to diseases or pests; planning and carrying out breeding studies to develop and improve variety of grasses and turf; analyzing the results to formulate a fertilization program for all turf grass areas; diagnosing and planning fungicide, insecticide, and herbicide applications, irrigation scheduling installation repairs; scheduling and supervising airification and topdressing of greens, trees, and fairways; effectuating studies on grass productions to discover the best methods of planting and caring for long duration under harsh conditions, as well as the effects of various climate and human conditions on grasses and turfs; developing methods for control of noxious weeds, diseases, and insect pests; supervising erosion control; and supervising a team overseeing the groundwork of the golf course. The petitioner stated that the job required the equivalent of a bachelor's degree in agronomy.

The director determined that the proposed position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the proposed duties most resembled those of supervisors of landscaping and that there is no minimum educational requirement for these jobs. The director also found that the combination of the beneficiary's education and work experience were not sufficient to qualify the beneficiary to perform the services of a specialty occupation.

On appeal, counsel asserts that the director improperly reclassified the position from agronomist to supervisor of landscaping and that the position of agronomist qualifies as a specialty occupation. Counsel asserts that the beneficiary's education combined with progressive work can be determined to be the equivalent to a bachelor's degree in agronomy or horticulture.

The AAO will first address the issue of whether the proposed position is a specialty occupation and will then address the issue of whether the petitioner is qualified to perform the duties of a specialty occupation.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has failed to establish that the proposed position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine 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 bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* in its consideration of whether or not a position is a specialty occupation and for information about the duties and educational requirements of particular occupations. Based on the petitioner's description and a thorough review of the *Handbook*, the AAO finds that the proposed position can be more precisely categorized as a supervisory golf course greenskeeper, rather than an agronomist. The proposed position is not that of an agronomist because, according to the *Handbook*, the work of agronomists plays an important part in maintaining the nation's food supply by ensuring agricultural productivity and the safety of the food supply. Agronomists are scientists who study plants and their growth in soils, helping producers of food, feed, and fiber crops. They tend to work in offices, laboratories, and sometimes spend time outdoors conducting research on farms and agricultural research stations. None of the proposed duties involves working with any sort of crop or working on farms, agricultural research stations, or laboratories.

The duties described for the proposed position more closely resemble the duties of a supervisory golf course greenskeeper. According to the *Handbook*, these individuals transplant, mulch, fertilize, and water flowering plants, trees, shrubs and lawns; supervise workers who mow and aerate the grounds regularly; and mix pesticides, herbicides, fungicides, or insecticides and apply them through sprays, dusts, vapors into the soil, or onto trees, shrubs, lawns, or botanical crops. These duties mirror the duties listed for the proposed position, such as "diagnosing and planning fungicide, insecticide, and herbicide applications," "supervising airification and topdressing of greens, trees, and fairways," and "developing methods for control of noxious weeds, diseases, and insect pests." The description of other duties the petitioner listed are too generic and nonspecific to allow the AAO to determine precisely what tasks the beneficiary would perform for the petitioner on a daily basis. For example, the petitioner states that the beneficiary will effectuate "studies on grass productions to discover the best methods of planting and caring for long duration under harsh conditions," but does not describe how these studies will be carried out. Counsel asserts that the director impermissibly focused on some proposed duties while ignoring others, but does not specify which duties elevate this position to one that requires a bachelor's degree in agronomy and does not provide evidence to support this assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

To determine if the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) – a bachelor's or higher degree or its equivalent, in a specific field of study is normally the minimum requirement for entry into the particular position – the AAO turns to the *Handbook's* discussion of the educational requirements for greenskeepers and supervisors of landscaping and groundskeeping workers. The *Handbook* indicates that there are no minimum education requirements for entry-level positions in ground maintenance and that:

Laborers who demonstrate a willingness to work hard and quickly, have good communication skills, and take an interest in the business may advance to crew leader or other supervisory positions. Advancement or entry into positions such as grounds manager and landscape contractor usually requires some formal education beyond high school and several years of progressively more responsible experience.

Thus, the petitioner has failed to establish that a bachelor's degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the proposed position.

The AAO turns next to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether letters or affidavits from companies or individuals in the industry attest that such companies "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). The petitioner has not provided any evidence that the requirement of a specific bachelor's degree is common in the golf course industry in parallel positions among similar golf courses.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. In the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity and uniqueness of the proposed position and the specialized nature and complexity of the proposed duties. A petitioner satisfies the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 bachelor's or higher degree in a specific field of study. The duties of the proposed position do not exceed the scope of those performed by supervisory greenskeepers, occupations that do not require specific bachelor's degrees. The petitioner asserts that the additional duties of conducting "experiments and investigations on grasses, roots, and terrain" are not normally performed by supervisory greenskeepers and add a layer of complexity to the proposed position. The record, however, lacks evidence that substantiates that the combined duties, as described by the petitioner, are so complex or unique that they can only be performed by an individual with a specific bachelor's degree, or that they are so specialized and complex as to require knowledge usually associated with the attainment of a bachelor's degree or higher in agronomy or a related field. The petitioner's assertions are not supported by any document in the record. Going on record

without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The director also found that the beneficiary would not be qualified to perform the duties of the proposed position if the job had been determined to be a specialty occupation. As the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications.¹

The burden of proving eligibility for the benefit sought remains entirely 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.

¹ The AAO notes that Professor ██████████ on behalf of the Foundation for International Services credentials evaluation service, asserted that he was an official who has authority to grant college-level credit for training and/or experience in biology at Seattle Pacific University, an accredited university with programs for granting such credit based on an individual's training and/or work experience. Professor ██████████ did not provide documentary evidence to support that assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).