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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

File: WAC 02 150 52239 Office: CALIFORNIA SERVICE CENTER Date: JAN 05 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a commercial flower grower. It has 150 employees, a gross annual income of $16,000,000, and seeks to employ the beneficiary as a horticulturist. The director determined that the proffered position did not qualify as a specialty occupation, and that the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief. Counsel asserts that the proffered position qualifies as a specialty occupation and that it is closely related to the position of a farm manager, as set forth in the United States Department of Labor's *Occupational Outlook Handbook (Handbook)*, as modern farming and farm management include the duties of commercial flower growing.

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), 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.

The issues to be discussed in this proceeding are whether the position offered to the beneficiary qualifies as a specialty occupation, and whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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 field 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

> B&H Flowers, Inc. is herewith petitioning for the services of [the beneficiary] as a temporary professional worker. [The beneficiary] would be employed as a Horticulturist and would be supervising and coordinating the activities of workers engaged in breeding, planting, cultivating, harvesting, and transporting the flowers grown in the greenhouses and fields of this commercial nursery, applying knowledge of environmental control structures, systems and techniques, and plant culture. He would determine the best methods of doing so, including the best methods of planting, spraying, and fertilizing, and the types and quantities of flowers to be grown, utilizing knowledge of plant germination, the growing habits of the various types of flowers, soil conditions, plant nutrients, and disease control requirements. He would select and purchase seed, plant nutrients, and disease control chemicals; plan the planting and picking schedules and make employee assignments; observe plants to ascertain

> their condition and oversee changes in cultivation procedures to insure conformance to quality standards; inspect facilities and oversee repairs; and direct those potting or cutting plants for marketing to minimize damage.

Subsequent to the filing of the initiating petition, the director asked the petitioner to establish that: the proffered position satisfied any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A); the beneficiary was qualified to perform the duties of a specialty occupation.

In response to the director's request, counsel restated the duties of the offered position indicating that those duties were so specialized and complex that knowledge required to perform them could only be obtained through baccalaureate level education in a specialized field, or its equivalent. Counsel also stated that the beneficiary's qualifications have been established by submission of a credentials evaluation report with the filing of the I-129 petition, and that the record is sufficient for Citizenship and Immigration Services (CIS) to evaluate the beneficiary's qualifications without the use of an evaluation report.

In denying the petition, the director held that the duties of the offered position parallel those of landscaping, groundskeeping, nursery, greenhouse and lawn service occupations discussed in the *Handbook*, noting that baccalaureate level training was not required for entry into those positions. *Occupational Outlook Handbook*, 2000-01 edition, at 332. The director, therefore, concluded that the proffered position did not qualify as a specialty occupation. The director further concluded that the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, counsel asserts that the duties of the proffered position are highly specialized, the performance of which requires the theoretical and practical application of a body of highly specialized knowledge. Counsel opines that the offered duties fall within those of a farm manager as discussed in the *Handbook*, and that farm manager positions are specialty occupations. In support of this opinion counsel refers to the U.S. Department of Labor's *Dictionary of Occupational Titles* and *Standard Occupational Code*. Counsel further states on appeal, that the beneficiary is qualified to perform the duties of a specialty occupation as he has been determined by a reliable credentials evaluation service to possess the equivalent of a bachelor's degree in horticulture from an accredited college or university in the United States based upon his foreign education and work experience.

The duties of the proffered position fall within those of

farmers, ranchers, and agricultural managers. Those occupations are discussed as follows in the *Handbook* at page 47:

> *Farmers and ranchers* may be owners of tenants who rent the use of land. 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** 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. . . .

(Emphasis added.) 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. A bachelor's degree in business with a concentration in agriculture is important. *Id.* at 48. In this instance, the petitioner is a commercial flower growing operation with 150 employees, and a gross annual income of $16,000,000. The requirement of a baccalaureate level education for the offered position is a reasonable requirement for the petitioner, and in the industry, due to the scope of business operations and complexity of the duties involved. The position is, therefore, a specialty occupation in that knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

The final issue to be considered is whether the beneficiary qualifies to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184 (i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(i) completion of such experience in the specialty equivalent to the degree, and

(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

(1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent or the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The offered position requires a baccalaureate or higher degree, or its equivalent, in business or a related field, with a concentration in agriculture, as a minimum requirement for entry into the position. The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2 (h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted an experiential evaluation.

An evaluation, dated February 26, 2002, was prepared by Diane C. Hurley, Director of Evaluations with the Foundation for

International Services, Inc. Ms. Hurley states that the beneficiary possesses the equivalent of a Bachelor's Degree in Horticulture from an accredited college or university in the United States, based upon the beneficiary's education and work experience. The evaluator is not, however, an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience as required by 8 C.F.R. § 214.2 (h)(4)(iii)(D)(1). Accordingly, she does not have authority to evaluate the beneficiary's work experience for the purpose of determining degree equivalence and her evaluation is of little evidentiary value. It has not been established that the beneficiary's education and work experience are equivalent to a baccalaureate or higher degree in a specialty occupation.

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), which provides:

> For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:
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> (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
>
> (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
>
> (iii) Published material by or about the alien in professional publications, trade journals, books or major newspapers;
>
> (iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The documentation recounting the beneficiary's work experience consisted of four letters of recommendation. Those letters noted the beneficiary's years of service and stated very generally his area of responsibility. The letters are insufficient in detail to determine that: the work experience included the theoretical and practical application of specialized knowledge required by the proffered position; the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the beneficiary has recognition of expertise in the specialty. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of the specialty occupation.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.