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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: EAC-02-215-52553 Office: VERMONT SERVICE CENTER Date: JAN 16 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 that 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner grows plant materials to supply to major stores. It has 300 employees and a gross annual income of $56 million. It seeks to employ the beneficiary as an assistant specialty grower for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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 nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the requirement of a bachelor's degree or an equivalent for an assistant specialty grower position is industry wide. Counsel also states that the record contains expert opinions in support of his claim. Counsel further states that the petitioner has obtained H-1B status for at least 15 growers and assistant growers during the past 10 years.

Counsel's statement on appeal is not persuasive. The AAO does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the

offered position combined with the nature of the petitioning entity's business operations are factors that the AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> [P]ropagation and growing of horticultural specialty products and crops of ten (10) acres, planning acreage utilization and planning work schedules for 45 employees, whom he would supervise.

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;
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> 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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in agronomy or a related field. The proffered position is that of an assistant specialty grower. Although the Department of Labor does not specifically address an assistant specialty grower position in its *Occupational Outlook Handbook*, an Internet search finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as an assistant specialty grower. For example, http://www.hrt.msu.edu/course/HRT221/, the website of the Department of Horticulture at Michigan State University, reveals that greenhouse growers and manager positions require some formal training and/or experience. Two-year technical

programs and a four-year bachelor's degree programs are available. Starting positions are usually as assistant grower or grower, with a greenhouse manager position coming only with several years experience. It is further noted that the petitioner's own website does not indicate that a baccalaureate degree is required for a grower position. Rather, it states: "Qualities we are looking for is to be [a] highly motivated individual to take charge[,] and [possess] "See the Big Picture" understanding over all crop scheduling through shipping, strong verbal communication skills required." In view of the foregoing, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as agriculture, for the offered position. The petitioner states that, although several of its assistant specialty growers do not hold a baccalaureate degree in agriculture or an equivalent, their educational background and/or prior employment experience equate a baccalaureate degree in agriculture. The record, however, does not contain any evidence in support of this claim. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The petitioner has submitted four opinions. The first opinion is from Ms. Maria A. Rabizo, Rural Labor Services Representative, Department of Labor, State of New York, who states, in part: "The larger greenhouses generally require both growers and growers assistants to have at least a four year degree." The second opinion is from Ms. Margery Daughtrey, Senior Extension Associate, Cornell University, who states, in part, that positions such as the proffered position require a minimum of a Bachelor of Science degree, or an equivalent, in floriculture, horticulture, agriculture, agronomy, or a related field. The third opinion is from Thomas C. Weiler, Professor of Horticulture, Cornell University, who states, in part, that positions such as the proffered position usually require the minimum of a Bachelor of Science degree, or an equivalent, in horticulture, agriculture, agronomy, or a related field. The fourth opinion is from Robert F. Zahra, of

Florpersonnel, Inc., who states, in part, that positions such as the proffered position require a B.S. degree.

It is noted that Ms. Rabizo does not specify that a degree in a specific field of study is required for the proffered position, and Mr. Zahra specifies only that a B.S. degree is required. Although Ms. Daughtrey and Professor Weiler do specify a particular degree field, they do not submit any evidence in support of their assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, Supra*. In view of the foregoing, the opinions are accorded little weight.

Counsel asserts that Citizenship and Immigration Services (CIS) has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the Vermont Service Center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the original H-1B petitions were approved in error.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approvals were granted in error, no such determination may be made without review of the original record in its entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petitions would have been erroneous. The AAO is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I. & N. Dec. 593, 597 (Comm. 1988). Neither the AAO nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied,* 485 U.S. 1008 (1988).

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding.

Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the 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 not sustained that burden.

ORDER: The appeal is dismissed.