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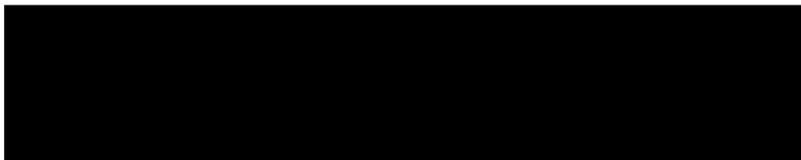
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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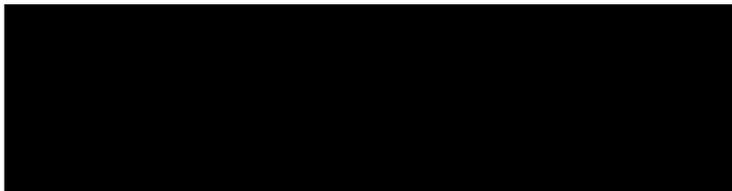
FILE: EAC 05 216 51191 Office: VERMONT SERVICE CENTER Date: AUG 06 2007

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 farm that seeks to employ the beneficiary as a farm manager. The petitioner, therefore, 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 because the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's requests for evidence; (3) counsel's responses to the director's requests; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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) consistently interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary’s services as a farm manager. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s April 27, 2005 letter in support of the petition; and counsel’s February 3, 2006 response to the director’s request for evidence. The petitioner submitted the following job description:

Responsible for managing a 150-acre livestock and crop farm. Ensure farm is run efficiently and properly. Plan day-to-day operation of the farm, including scheduling of farm workers. Hire and discharge farm workers. Decide how allotted budget is spent. Analyze market conditions. Purchase farm machinery, equipment and supplies, such as tractors, seed, fertilizer, and chemicals. Confer with purchasers, and determine when and under what conditions to sell crops. Raise animals such as cattle, pigs, sheep, and poultry, and determine when and if to sell them. Identify animal health problems that require veterinary treatment. Grow ethnic crops such as Hungarian white, green, and red peppers. Oversee tending of crops. Visit fields to inspect and estimate maturity dates of crops and potential damage due to harsh weather conditions and poor growing conditions. Confer with owners to discuss all farm activities, prepare annual and line-item budgets, and long-range plans.

The director found that the petitioner had not demonstrated that the proposed duties are so complex as to require a bachelor’s degree. Citing the Department of Labor’s (DOL) *O*Net* and *Occupational Outlook*

Handbook (Handbook), the director noted that farm manager positions frequently do not require a baccalaureate degree or its equivalent in a specific specialty. The director concluded 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 contends that the director ignored the supporting material, and cites a court decision to state that the petitioner's size, number of employees, and proposed salary were improperly used to deny the petition. Counsel also contends that the director misused the DOL's *O*Net* and *Handbook*, and disregarded and rejected compelling evidence including expert opinions and a decision from the AAO regarding farm manager positions. Counsel concludes: "By the proper legal standard (preponderance of evidence), there is no rational way in which USCIS could have denied the case." Supporting documentation includes the following: excerpts from DOL publications; a prior AAO decision; an affidavit and business plan from an agricultural consultant; a letter, dated January 23, 2006, from the Director of Education and Accreditation of The American Society of Farm Managers and Rural Appraisers, Inc.; and an opinion letter, dated February 3, 2006, from a university dean/professor.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Although a review of the *Handbook*, 2006-07 edition, finds that farm/agricultural managers, in some instances, may qualify as a specialty occupation, the AAO does not concur with the petitioner that the proffered position is a specialty occupation. The *Handbook* reports the following regarding the duties of a farm/agricultural manager:

On small farms, [farm/agricultural managers] may oversee the entire operation . . .

Agricultural managers usually do not perform production activities; instead, they hire and supervise farm and livestock workers, who perform most of the daily production tasks. In these cases, managers may establish output goals; determine financial constraints; monitor production and marketing; hire, assign, and supervise workers; determine crop transportation and storage requirements; and oversee maintenance of the property and equipment.

The petitioner has provided a general description of the proposed duties of the position that generally tracks the information in the *Handbook* regarding the nature of the duties of a farm manager. However, while such a generalized description is necessary when defining the range of duties that may be performed within an occupation, the petitioner cannot rely on such generalities when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In the instant matter, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing. It has not detailed the actual work to be performed in this position in relation to specific projects, but rather has provided a generic description of the duties of the occupation of a farm manager. The AAO cannot discern from the general description provided that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge attained through the completion of a bachelor's or higher degree in a specific specialty. The petitioner has failed to establish the necessity of a bachelor's or higher degree for the proffered position.

The AAO disagrees with counsel's interpretation of the *O*Net* and its applicability to a determination that a position is a specialty occupation. The AAO does not consider the *O*Net* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *O*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *O*Net* ratings are meant to indicate the total number of years of vocational preparation required for a particular occupation and does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require.

Counsel asserts that the director erred when determining that the evidence must show that a directly related bachelor's degree or its equivalent is required by the position in order to establish the position as a specialty occupation. Counsel contends that the director's determination substitutes CIS judgment for that of the DOL. Counsel claims that CIS' failure to consider all information in the *O*Net* relating to farm managers is arbitrary and capricious. The AAO disagrees. A review of a portion of the information in the *O*Net* showing the percentage of farm managers who have bachelor's degrees coupled with information in the *Handbook* regarding the formal educational requirements for farm managers shows that a bachelor's degree is not a specific requirement of the position. The AAO emphasizes that the *O*Net* does not provide a definitive statement regarding the formal educational requirements for the position, while the *Handbook* provides this more specific information. Thus, when addressing the issue of whether a position is a specialty occupation, the AAO relies on the more definitive information reported in the *Handbook*. In this instance, the *Handbook's* report on the formal educational requirements is supported by the *O*Net's* report on the percentage of farm managers who actually possess a bachelor's degree. The AAO declines to speculate on the myriad number of combinations of training, formal education, and experience that could be used to comprise a specialty occupation. Rather, the AAO relies on the *Handbook* that reports: "the completion of a 2-year degree, or better, a 4-year bachelor's degree program in a college of agriculture, is becoming increasingly important for farm managers and for farmers and ranchers who expect to make a living at farming." This report

acknowledges the importance of some formal education but does not indicate that formal education in a specific discipline is a requirement to perform the duties of a farm manager.

The record contains an opinion letter, dated February 3, 2006, from a university dean/professor, who opines that farm manager positions, such as the proffered position, are "always filled by an individual with the minimum of a bachelor's degree in Veterinary Science and Farm Management or its equivalent." Counsel asserts that this expert's finding satisfies the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The record also contains an opinion letter, dated January 23, 2006, from the Director of Education and Accreditation of The American Society of Farm Managers and Rural Appraisers, Inc., who opines that, based on the complexity of the duties of farm managers in the United States today, "the typical minimum educational requirement for [the proffered position] is a degree in Agricultural Economics or some type of animal/plant husbandry." Counsel asserts that this expert's finding satisfies the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that the degree requirement is common to the industry in parallel positions among similar organizations.

Both opinions, however, fail to include a discussion of the actual work the beneficiary would perform within the context of this particular petitioner's business, but rely on the general overview of described duties initially submitted. The authors do not indicate that they interviewed the beneficiary or the petitioner, or otherwise reviewed the petitioner's business operations. They do not relate any personal observations of the petitioner's operations or of the work that the beneficiary would perform, nor do they state that they have reviewed any projects or work products related to the proffered position. Their opinions do not relate their conclusions to specific, concrete aspects of this petitioner's business operation demonstrating a factual basis for their conclusions about the nature of the proffered position. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Although the author of the February 3, 2006 opinion states that he has interviewed over 100 employers of farm managers, he does not support this statement with documentary evidence. 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)). Moreover, the author does not explain why his opinion, which appears contrary to the *Handbook's* report on this occupation, should be given greater weight than that of the *Handbook*. The *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. The opinion of the February 3, 2006 author is insufficient to overcome the *Handbook's* finding that not all farm managers require a bachelor's degree in a specific field.

The AAO notes counsel's assertion: "By the proper legal standard (preponderance of evidence), there is no rational way in which USCIS could have denied the case." Again, as discussed above, although the petitioner claims that the beneficiary would work as a farm manager, an overview of an "occupation" is insufficient to

establish the proffered position as a specialty occupation. The petitioner must detail its expectations of the proffered position and must provide evidence of the duties that comprise the proffered position as it relates specifically to the petitioner's business. In this matter, the information on the petition that was signed by the petitioner on May 2, 2005, reflects that the petitioner was established in 1992 and has no employees. The petitioner's 2002 and 2003 federal income tax returns reflect farm income of \$490.55 and \$105.00, respectively. Further, the petitioner's business plan from the farming consultant discusses flower production and trout and catfish production, activities that are not included in the proposed duties. The writer of the plan states: "You will need to be involved in these discussions as we go so that I can learn about what type of farm that you actually wish to operate."

Thus, the record is unclear regarding the actual start up of the petitioner's farming business and the particular direction it will be taking. The record does not contain sufficient documentary evidence that the petitioner requires the services of a farm manager to perform specific duties that require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) when the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The AAO notes counsel's implication that CIS is restricting the petitioner from hiring an individual to assist in the start up of its farming business. The AAO disagrees. The petitioner must provide substantive evidence that the proffered position existed as a specialty occupation when the petition was filed. To accomplish this, the petitioner must provide information such as financing arrangements, an unambiguous business plan, and a good illustration of the actual duties of the proposed position. Providing a nebulous business plan, no information on financing arrangements, and an overview of the duties of a generic farm manager are insufficient to support a finding that the proposed position is that of a specialty occupation rather than a position that is speculative and dependent on numerous extraneous factors.

Again, the petitioner does not relate the nonspecific responsibilities described to the specifics of the petitioner's business nor does the petitioner define how these general duties apply to a specific discipline. Nor does the petitioner provide evidence of what the beneficiary does on a day-to-day basis. Only a detailed job description will suffice to meet the burden of proof in these proceedings. *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). As the duties of the proffered position are ill-defined and do not specifically correspond to the petitioner's business the petitioner cannot establish a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The record does not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the generally described position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. The AAO acknowledges counsel's assertion that the opinion

letter, dated January 23, 2006, from the Director of Education and Accreditation of The American Society of Farm Managers and Rural Appraisers, Inc., satisfies this criterion. As discussed above, the writer who opines that based on the complexity of the duties of farm managers in the United States today, “the typical minimum educational requirement for [the proffered position] is a degree in Agricultural Economics or some type of animal/plant husbandry.” Without a meaningful job description related to the specifics of the petitioner's business, however, the petitioner may not establish the position's duties as parallel to any degreed positions within similar organizations in its industry or distinguish the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion.

Counsel also submits a copy of a prior AAO decision and states that the AAO has already determined that a farm manager position is a specialty occupation. A review of the prior decision reflects that the petitioner was a 1200-acre dairy and crop farm with 12 employees and a gross annual income of \$2,400,000. The petitioner has not demonstrated that the responsibility for the farm operations depicted in the record is parallel to the responsibility associated with the farm described in the prior AAO decision. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. The AAO notes counsel's reference to a district court decision that the petitioner's size and number of employees must not be considered. However, the basis of this decision does not rely on the nature or size of the petitioner to conclude that the proffered position does not meet any of the requirements for a specialty occupation; rather the AAO finds that the petitioner has not clearly documented the duties of the position in relation to its business and has not substantiated its business operations. Again, counsel's assertion on appeal that the proffered position is that of a farm manager is noted. However, 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. at 165. 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).

The record does not include sufficient evidence from individuals, firms, or professional associations regarding an industry standard. Again, as discussed above, the duties that comprise the proffered position are described in generalized terms that do not indicate the necessity of a body of highly specialized knowledge attained by at least a baccalaureate degree level of coursework in a specific specialty. Without a meaningful job description of the beneficiary's actual work in conjunction with an analysis of the petitioner's operations, the petitioner cannot show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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. Counsel states, on appeal, that the beneficiary will oversee crop production, raise and sell livestock, and conduct other related duties, a job that requires a farm manager. Again, the description of the petitioner's proffered position is general and provides no understanding of how the duties relate to the specific needs of the petitioner. Moreover, the information in the record does not detail any complex or specialized tasks pertinent to the proffered position. The petitioner has not provided sufficient information to establish that the duties as generally described are duties that correspond to a position that is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.