



U.S. Citizenship  
and Immigration  
Services

invasion of personal privacy  
identifying an individual to  
prevent clearly unwarranted  
invasion of personal privacy

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FILE: EAC 02 291 53810 Office: VERMONT SERVICE CENTER Date: APR 6 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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 of the Administrative Appeals Office in your case. All materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a family farm business. It seeks to employ the beneficiary as production and sales manager and to classify her 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 ground that the record failed to establish that the proffered position qualified as a specialty occupation.

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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, a letter from the petitioner, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a farming operation, with fifteen employees and gross annual income of \$345,000, specializing in the production and marketing of fruits and vegetables. It seeks to hire the beneficiary as its production and sales manager to assume responsibility for such activities as irrigation management, crop layout, and pest control, overseeing the planting, growth, and harvesting of crops, and managing sales of the produce at farmer's markets and retail stands. In response to the RFE the petitioner described the primary mission of the proffered position as planning the production schedule within budgetary limitations and time constraints, and listed the specific duties as follows:

- Direct and coordinate planting, raising, harvesting, and marketing of crops.
- Manage crop production.
- Conduct daily and weekly supervision of irrigation, crop layout, and pesticide use.
- Analyze market conditions to determine acreage allocations.
- Perform strategic and financial analysis to identify internal and external growth opportunities.
- Inform personnel of change(s) in policies and procedures.
- Increase productivity, efficiency, and quality.
- Manage, hire, discharge, and promote personnel involved with the production and sale of farm products, enforce safety regulations, and interpret policies.
- Plan, organize, and arrange for sales through farmer's markets, retail stands, and wholesale outlets.

According to the petitioner, the proffered position requires specific knowledge, skills, and abilities in the following areas:

- Techniques and equipment for planting, growing, and harvesting food products, including storage and handling.
- Business and management principles for strategic planning, resource allocation, human resources, leadership techniques, production methods, and coordination of people.
- Economic and accounting principles and practices, the financial markets, banking, and the analysis and reporting of financial data.
- Principles and procedures for personnel recruitment and selection, training, compensation and benefits, labor relations and negotiations, and personnel information systems.
- Raw materials, production processes, quality control, costs, and techniques for maximizing the effective production and distribution of goods.
- Motivate, develop, and direct people as they work.
- Obtain and monitor the appropriate use of equipment, facilities, and materials.
- Determine how money will be spent and provide accounting for expenditures.

The petitioner contended that the position required at least a bachelor's degree in agronomy, agriculture, or a related field. The record indicates that the beneficiary completed a five-year course of study at the Moscow Academy of Agriculture, graduating in June 2001 with a diploma as a scientist-agronomist. That same month the beneficiary came to the United States on a J-1 visa, in an agricultural exchange program sponsored by the Future Farmers of America, and was placed at the petitioner's farm for on-the-job training.

The director found that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The Department of Labor (DOL)'s *Occupational*

*Outlook Handbook (Handbook)*, the director noted, did not indicate that a baccalaureate or higher degree in a specific specialty was the normal minimum requirement for entry into a production and sales position in the agricultural field. Nor was the director persuaded that the duties of the job were so complex, unique or specialized that they required the theoretical and practical application of a body of highly specialized knowledge attained through a bachelor's or higher degree in a specific job-related specialty. The petitioner's assertion that the proposed duties of the position required a specialty degree did not make the position a specialty occupation, the director declared, absent evidence that the duties of the job actually required such a degree or that the industry standard for similar jobs in the region was a baccalaureate degree in a specific specialty. Nor did the petitioner demonstrate that it normally hired individuals with specialty degrees for the proffered position.

On appeal the petitioner asserts that the growth in its business has created the need to hire an employee, like the beneficiary, with a specialty degree in agronomy. The petitioner asserts that it has been unable to find anyone on the local market with the beneficiary's educational qualifications and agricultural experience.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

The production and sales manager position proffered by the beneficiary in this case falls within the *Handbook's* occupational category of agricultural managers, whose work is described as follows:

*Agricultural managers* manage the day-to-day activities of one or more farms, ranches, nurseries, timber tracts, greenhouses, and other agricultural establishments for farmers, absentee landowners, or corporations. Their duties and responsibilities vary widely, but are concentrated on the business aspects of running a farm. On small farms, they may oversee the entire operation, while on large farms they may oversee a single activity, such as marketing. 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.

. . . . In crop production operations . . . [agricultural] managers 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 . . . . [S]ome . . . particularly operators of smaller farms, may choose

to sell their goods directly through farmer's markets, or use cooperatives to reduce their financial risk and to gain a larger share of consumers' expenditures on food.

. . . [Agricultural managers] must also keep abreast of constantly changing prices for their products and be able to manage the risk of fluctuating prices. Those who plan ahead may be able to store their crops or keep their livestock to take advantage of better prices later in the year.

*Handbook*, 2004-05 edition, at 37. As for the educational background and experience required of agricultural managers, the *Handbook* states as follows:

Growing up on a family farm and participating in agricultural programs for young people . . . are important sources of training for those interested in pursuing agriculture as a career. However, modern farming requires increasingly complex scientific, business, and financial decisions. Therefore, even people who were raised on farms must acquire the appropriate education.

Not all agricultural managers grew up on farms or ranches. For these people, a bachelor's degree in business with a concentration in agriculture is important. In addition to formal education, they need several years of work experience in the different aspects of farm and ranch operations in order to qualify for an agricultural manager position.

. . . Completion of a two-year degree, and preferably a four-year bachelor's degree program in a college of agriculture, is becoming increasingly important.

*Handbook, id.*, at 38. While the foregoing excerpts indicate that a baccalaureate degree in agriculture or a related specialty is increasingly common and desirable for agricultural managers, it does not indicate that a four-year specialty degree is the normal minimum requirement for entry into such a position. According to the *Handbook*, a two-year (associate's) degree may also be sufficient for an agricultural manager position, or no degree at all if an individual grew up on a farm and has a lifetime of experience in the agricultural field. The AAO concludes, therefore, that the proffered position does not meet the first alternative criterion of a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record does not establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has submitted a series of job announcements from companies seeking to fill a variety of managerial positions. None of the companies appears to be in the same line of business as the petitioner's fruit and vegetable farm, however, and most or all of the companies appear to be considerably larger than the petitioner in terms of personnel and business scope. Moreover, only one of the advertisements – from an unidentified company in south central Missouri seeking a field crops area sales manager – seems like it may be close to the business and proffered position at issue in this case. That advertisement does not indicate that a baccalaureate degree in a specific specialty is required for the job, however, since it expressly states that a B.S. degree in agriculture or five years of equivalent experience is required. Thus, the job advertisements submitted by the petitioner do not establish that the requirement of a specialty degree is common to the industry in parallel positions among similar organizations. Accordingly, the evidence does not establish that the proffered position qualifies as a

specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, as required under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner has submitted no evidence demonstrating the uniqueness of the position or that its complexity exceeds that of agricultural managers on other farms of the petitioner's nature and scale, such that a degree in a specific specialty would be required.

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. As discussed by the director in his decision, the newspaper advertisement for the position – requiring a “degree in agricultural studies” – post-dated the filing of the instant H-1B petition and, therefore, has no evidentiary weight. Thus, the petitioner cannot show that it normally requires a bachelor's degree in a specific specialty for the position, as required to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Furthermore, the co-owners of the farm state in their appeal letter that “[m]any of the tasks [of the position] were carried out previously by us.” The record does not establish that either of the co-owners has a degree in agriculture, since their co-signed letter states that one has a B.A. in economics and the other has “education in agricultural sciences,” without indicating whether a degree was earned or submitting documentation of such a degree.

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. On appeal the petitioner has submitted a letter from a certified professional agronomist, retained by the petitioner as a professional crop consultant and agronomist, who describes the petitioner's farming and marketing operation in detail and asserts that a production and sales manager of the beneficiary's caliber is needed. Nothing in the letter indicates that the duties of the proffered position are broader in scope than those usually encountered by agricultural managers as described in the *Handbook*, however, or demonstrates that baccalaureate-level knowledge in a specific specialty is required for the position.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

**ORDER:** The appeal is dismissed. The petition is denied.