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U.S. Citizenship  
and Immigration  
Services

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*02*

FILE: WAC 05 004 53657 Office: CALIFORNIA SERVICE CENTER Date: MAR 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
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 landscape contractor that seeks to employ the beneficiary as a landscape services 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. On appeal, counsel submits a brief.

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 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 additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a landscape service manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's support letter. According to this evidence, the beneficiary would perform duties that entail planning, directing, and coordinating the activities of landscape workers; providing leadership, self-confidence, and motivation so as to maximize work efforts and create positive labor-management relationships; serving as the client liaison; generating bids and estimates; and ordering plants and materials. The petitioner requires a degree in agriculture for the proposed position.

The director denied the petition, finding that the proposed position resembles a supervisor of landscape workers as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) classification of grounds maintenance workers, and that the *Handbook* reveals that this occupation does not require a baccalaureate degree in a specific specialty.

On appeal, counsel states that the "nature of the petitioning entity's business operations" such as the petitioner's size is irrelevant in determining whether the offered position qualifies as a specialty occupation. Counsel explains the beneficiary's role in the organization and states that the proposed duties are complex, requiring independent and valuable expertise. According to counsel, the proposed position requires a bachelor's degree as it resembles an agricultural manager, which is an occupation encompassed within the *Handbook's* section on farmers, ranchers, and agricultural managers. Counsel contends that the *Occupational Information Network* (the *O\*Net*) and college materials and recruitment information reflect that the proposed position requires a bachelor's degree.

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 first considers 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)).

Counsel's reference to and assertions about the relevance of information from the *O\*Net* are not persuasive. Neither a specific vocational preparation (SVP) rating nor a job zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and job zone category are meant to indicate only

the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

In determining 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 baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel asserts that the proposed position is that of an agricultural manager. The *Handbook* depicts this occupation 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 focus on the business aspects of running a farm. On small farms, they may oversee the entire operation; on larger 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.

Farmers, ranchers, and agricultural managers make many managerial decisions. Farm output and income are strongly influenced by the weather, disease, fluctuations in prices of domestic and foreign farm products, and Federal farm programs. In crop production operations, farmers and managers usually determine the best time to plant seed, apply fertilizer and chemicals, and harvest and market the crops. They use different strategies to protect themselves from unpredictable changes in the markets for agricultural products. Many farmers and managers carefully plan the combination of crops they grow, so that if the price of one crop drops, they will have sufficient income from another crop to make up for the loss. While most farm output is sold directly to food-processing companies, some farmers—particularly operators of smaller farms—may choose to sell their goods directly through farmers' markets or may use coöperatives to reduce their financial risk and to gain a larger share of the retail dollar. For example, in community-supported agriculture (CSA), coöperatives sell shares of a harvest to consumers prior to the planting season, thus freeing the farmer from having to bear all the financial risks and ensuring the farmer a market for the produce of the coming season.

Farmers, ranchers, and agricultural managers also negotiate with banks and other credit lenders to get the best financing deals for their equipment, livestock, and seed. They also must keep abreast of constantly changing prices for their products and 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 higher prices later in the year. Those who participate in the risky futures market, where contracts on future production of agricultural goods are bought and sold, can minimize the risk of sudden price changes by buying futures contracts which guarantee that they will get at least a certain price for their agricultural goods when they are ready to sell.

As described by the petitioner, the proposed duties differ from those of an agricultural manager. An agricultural manager manages “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.” An agricultural manager runs a horticultural farm or a farm that grows crops, or manages a nursery or a greenhouse; an agricultural manager will “hire and supervise farm and livestock workers”; and is responsible for “farm output.” A review of the beneficiary’s job description reveals that the beneficiary has none of these duties. The beneficiary will plan, direct, and coordinate the activities of landscape workers; serve as the client liaison; generate bids and estimates; and order plants and materials.

The director correctly concluded that the proposed position is similar to the *Handbook’s* description of a supervisor of landscape workers. The *Handbook* conveys:

*Supervisors of landscaping and groundskeeping workers* perform various functions. They prepare cost estimates, schedule work for crews on the basis of weather conditions or the availability of equipment, perform spot checks to ensure the quality of the service, and suggest changes in work procedures. In addition, supervisors train workers in their tasks; keep employees’ time records and record work performed; and even assist workers when deadlines are near. Supervisors who own their own business are also known as *landscape contractors*. They may also call themselves *landscape designers* if they create landscape design plans.

The *Handbook* portrays landscaping workers as follows:

Landscaping workers physically install and maintain landscaped areas. They grade property, install lighting or sprinkler systems, and build walkways, terraces, patios, decks, and fountains. In addition to initially transporting and planting new vegetation, they transplant, mulch, fertilize, and water flowering plants, trees, and shrubs and mow and water lawns. A growing number of residential and commercial clients, such as managers of office buildings, shopping malls, multiunit residential buildings, and hotels and motels, favor full-service landscape maintenance. Landscaping workers perform a range of duties, including mowing, edging, trimming, fertilizing, dethatching, and mulching for such clients on a regular basis during the growing season.

The *Handbook* conveys that landscaper supervisors and workers do not require a bachelor's degree in a specific specialty. It states:

There usually are no minimum educational requirements for entry-level positions in grounds maintenance, although a diploma is necessary for some jobs.

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.

The record contains information about university programs relating to horticulture, botany, and geology. On appeal, counsel states that these programs establish the requirement of a bachelor's degree for the proposed position. **The AAO disagrees.** No evidence in the record suggests that employers base their hiring requirements on the academic programs offered by universities. The articles in the record about gardening do not discuss the educational requirements of a landscape services manager.

Based on the evidence in the record, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the record contains job postings. The postings are not persuasive as they indicate that the companies are dissimilar in nature (size and scope) from the petitioner; or they do not disclose the employer's nature. The commercial landscaping company serving the Tampa market, [REDACTED], and the private facilities company postings do not indicate the nature (size and scope) of the employer; thus, the AAO cannot determine whether these businesses are similar to the petitioner, a small landscape contractor. RBF consulting has over 800 professional employees, including engineers; and [REDACTED] seems to be a Fortune 500 company. These companies, therefore, differ in nature from the petitioner. The duties of the [REDACTED] position do not parallel those of the beneficiary as they involve working on construction projects. For these reasons, the postings fail to show that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence establishes the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* discloses that the proposed position is similar to a supervisor of landscaper workers, which is an occupation that does not require a bachelor's degree in a specific specialty.

No evidence reflects that the petitioner normally requires a degree or its equivalent for the position as required to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Since the *Handbook* reveals that the proposed position is analogous to that of a supervisor of landscape workers, which is an occupation that does not require a bachelor's degree in a specific specialty, the petitioner fails to establish this last criterion.

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.