



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **AUG 26 2013** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director 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.

On the Form I-129 visa petition, submitted July 30, 2012, the petitioner describes itself as an "Orchid Plants Farms" firm with 28 employees in the United States. To employ the beneficiary in what it designates as a Head Grower of Orchids position,<sup>1</sup> the petitioner endeavors to classify him 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in his decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] 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

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<sup>1</sup> On the Form I-129 the proffered position characterized the proffered position as a "Head Gorwer of Orchids" position, obviously due to a typographical error.

specialties, accounting, law, theology, and the arts, and which [(2)] 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, a proposed position must also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular

position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS 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. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. 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 Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Head Grower of Orchids position, and that it corresponds to Standard Occupational Classification (SOC) code and title 45-1011, First-Line Supervisors of Farming, Fishing, and Forestry Workers from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level IV position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in agricultural management from [REDACTED]. The record does not contain an evaluation of that degree in terms of its equivalence to any U.S. degree.

Counsel also provided a letter, dated July 20, 2012, from the petitioner's president. The petitioner's president stated that the duties of the proffered position include:

Overseeing the unpacking of all orchids upon arrival from [REDACTED]. Documenting any quality issues or problems on all receiving shipments. Controlling and overseeing all aspects of planting, growing and quality of all grown orchids. Ensuring growing staff has the knowledge to assist in the growing of orchids.

On August 9, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, additional evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted. The RFE specifically requested:

If you have previously employed individuals in the position of Head Grower of Orchids, submit documentary evidence such as W-2 Forms and copies of degrees and transcripts to verify:

- The number of individuals you have employed in this position in the past,
- The level of education held by each individual and
- The field of study in which the degree was earned.

The RFE also requested: "Provide a copy of your organizational chart, including job titles and descriptions for each position, as well as evidence of the degree held by each employee."

In response, prior counsel for the petitioner submitted a letter in which he asserted:

The person who previously held the position of Head Grower of Orchids was [REDACTED]. He is now going to move up to the position of vice president of the company. [REDACTED] held the position of head grower of orchids from the time of his graduation from college until the employment of [the beneficiary] in this position. He was paid \$69,600 per year. Please see copy of his 2011 tax return and Form W-2.

Prior counsel also provided the following amended description of the duties of the proffered position:

Walking through the greenhouses, inspecting all orchid plants for signs of insect infestation and/or disease (2 hours per day, or 25 percent of the time);

Controlling and overseeing all aspects of planting, growing and quality of all grown orchids (144 minutes per day, or 30 percent of the time);

Overseeing the unpacking of all orchids upon arrival from [REDACTED] (96 minutes per day, or 20 percent of the time);

Documenting any quality issues or problems on all receiving shipments (96 minutes per day, or 20 percent of the time);

Ensuring growing staff has knowledge to assist in the growing of orchids (24 minutes per day, or 5 percent of the time.)

Prior counsel did provide a Form 1040 U.S. Individual Income Tax Return showing that [REDACTED] received Line 7, Wages, salaries, tips, etc. of \$69,600 during 2011. No W-2 form was provided. Further, no evidence was submitted to demonstrate how many Head Grower of Orchids

the petitioner has employed or what their educational qualifications were, and no evidence that [REDACTED] has the degree alleged.

Prior counsel did provide the requested organizational chart, which identifies six employees by name,<sup>2</sup> identifies 29 employees by position only,<sup>3</sup> and indicates that the petitioner employs automobile maintenance workers, but does not indicate how many. That organizational chart shows, therefore, that the petitioner employs a minimum of 36 workers.

The director denied the petition on November 9, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submitted, *inter alia*, (1) a letter, dated December 10, 2012, from the petitioner's president; (2) two vacancy announcements; (3) the diploma of [REDACTED]; and (4) a brief.

In his December 10, 2012 letter, the petitioner's president provided the following expanded version of the duties of the proffered position:

- Manage day-to-day operation and be responsible for the performance of the greenhouse, including bench arrangement, cultivation, watering, preparing growth media, fertilization, insect and disease control.
- Monitor and control plant growing environments in defined growing areas for year-round growth, yield and flowering of various breeds of orchids.
- Identify, record, and develop systematic programs related to appropriate horticultural practices for different varieties of orchids.
- Develop and manage comprehensive pest and nutrient management programs.
- Conduct and test cultivation procedures, regarding photoperiod response, temperature sensitivity, fertilizers formula, microelements application and combination, to ensure enhanced growth and high quality yields of orchid.
- Plan for flowering control according to seasonal requirements and market demand.

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<sup>2</sup> The organizational chart identifies [REDACTED] as the petitioner president; [REDACTED] as the petitioner's vice president and as supervising sales; the beneficiary, as the petitioner's head grower; [REDACTED] as supervising shipping; [REDACTED] as supervising finance and human resources; and [REDACTED] as supervising marketing.

<sup>3</sup> The organizational chart indicates that the petitioner employs ten people in its production team, seven people in its packaging and loading team, six people in greenhouse maintenance, and six people as drivers.

- Ensure timely reporting of all production data, expenses, pertinent financial information, and operational costs.
- Supervise greenhouse staffs and crews, including establishing work schedules, assigning tasks and responsibilities, and evaluating performance.
- Monitor and ensure continuing controlled environmental conditions in the greenhouses and other planting areas to ensure optimal growth and yield performance.
- Develop benchmarking practice and standard operation procedures as well as conduct internal training session for orchid production.
- Recognize leading indicators affecting desired orchid growth and flowering and develop countermeasures further enhance the spectrum and success of orchid production.
- Perform market analysis to understand different customer needs and preferences, in terms of price, color, pot size or design, and orchid species.
- Combine market analysis results to develop customer-based marketing strategies, conduct potential market demand forecasting, and implement appropriate supply chain management initiatives into the business operations.
- Build a competitive advantage on existing greenhouse capacity, weather control conditions, and crops characteristics in order to implement diversified business strategies in order to achieve and exploit economies of scale. (i.e. Growing different types of orchid species in a confined greenhouse space to maximize greenhouse production efficiency.)
- Combine all factors, such as seasonal climate, market demands, greenhouse capacity, crops varieties or species to generate a proper forecast production schedule.
- Establish and maintain procurement processes and coordinate with vendors to procure orchids being cultivated.

Referring to the description of duties provided in prior counsel's response to the RFE, the petitioner's president further stated:

Many if not all aspects of the description of duties for the proffered position require not only advanced academic training as a minimum qualification, a Bachelor's degree in Plant Science or Agricultural Management or equivalent from a recognized accredited university, but also years of field experience must also be deemed proficient.

For example, in order to competently realize "*inspecting all orchid plants for signs of insect infestation and/or disease...*" and "*controlling and overseeing all aspects of planning, growing and quality of all grown orchids*", the proffered position must first be fluent in all aspects of orchid breeding, growth, and flowering control – a professional position qualifies as a specialty occupation fulfilling pertinent requirements set forth in 8 C.F.R. 214.2(h)(4)(iii)(A)..

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[Errors in the original].

The diploma of [REDACTED] shows that he received a bachelor's degree from [REDACTED] on February 28, 2010. It does not indicate the subject in which he received that degree.

In his brief, counsel cited the vacancy announcements submitted and the [REDACTED] website report on Nursery and Greenhouse Managers as evidence that the proffered position qualifies as a specialty occupation position.

Counsel asserted that the petitioner's vice president, [REDACTED] is the only previous head grower in the petitioner's history. He also characterized [REDACTED] diploma as "the main proof that the [proffered] position is a specialty occupation position . . . ."

Counsel further stated:

Lastly, the position of Head Orchid Grower for the petitioner is tasked with realizing high yield rate from imported orchid seedlings of unique colors to flower at specified times and periods. The nature of these and other specific duties are [sic] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a technical baccalaureate degree in Horticulture, Agriculture, or Agronomy or related field.

To determine whether the proffered position qualifies as a specialty occupation position, 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 in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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 will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. On the LCA, the petitioner claimed that the proffered position corresponds to SOC code and title 45-1011, First-Line Supervisors of Farming, Fishing, and Forestry Workers from O\*NET. Subsequently, present counsel submitted the O\*Net Summary Report pertinent to SOC code 11-

9013.01, Nursery and Greenhouse Managers to support the proposition that the proffered position qualifies as a specialty occupation position.

In either event, whether the proffered position is a nursery or greenhouse manager position or a first line supervisor of farming, fishing, and forestry workers position, O\*NET does not support the proffered position that the position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

On August 9, 2013, the AAO accessed the pertinent section of the O\*NET Internet site, which addresses Nursery and Greenhouse Managers under the Department of Labor's Standard Occupational Classification code of 11-9013.01. It assigns nursery and greenhouse manager positions a Job Zone "Three" rating, which groups them among occupations of which "most," but not all, "require training in vocational schools, related on-the-job experience, or an associate's degree." It provides no indication that the proffered position, if it is correctly classified as a nursery or greenhouse manager position, requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The AAO also accessed the section pertinent to First-Line Supervisors of Farming, Fishing, and Forestry Workers under the Department of Labor's Standard Occupational Classification code of 45-1011, and found it to contain the following subdivisions:

- 45-1011.05 First-Line Supervisors of Logging Workers
- 45-1011.06 First-Line Supervisors of Aquacultural Workers
- 45-1011.07 First-Line Supervisors of Agricultural Crop and Horticultural Workers
- 45-1011.08 First-Line Supervisors of Animal Husbandry and Animal Care Workers

If this section pertains to the proffered position, then it would clearly be included in 45-1011.07, First-Line Supervisors of Agricultural Crop and Horticultural Workers, as it is unrelated to logging, aquaculture, animal husbandry, and animal care.

O\*NET assigns SOC code 45-1011.07, First-Line Supervisors of Agricultural Crop and Horticultural Workers positions a Job Zone "Two" rating. Of positions in Job Zone Two, O\*NET states, "some preparation needed," and further, "These occupations usually require a high school diploma." O\*NET provides no indication that the proffered position, if it is correctly classified as a first-line supervisor of agricultural crop and horticultural workers position, requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup> The *Handbook* describes the corresponding occupation of "Farmers, Ranchers, and Other Agricultural Managers" as follows:

### **What Farmers, Ranchers, and other Agricultural Managers Do**

Farmers, ranchers, and other agricultural managers run establishments that produce crops, livestock, and dairy products.

### **Duties**

Farmers, ranchers, and other agricultural managers typically do the following:

- Supervise all steps of the crop production and ranging process, including planting, fertilizing, harvesting, and herding
- Determine how to raise crops or livestock according to factors such as market conditions, federal program availability, and soil conditions
- Select and purchase supplies, such as seed, fertilizers, and farm machinery
- Operate and repair farm machinery so it cultivates, harvests, and hauls crops
- Adapt what they do as needed for weather and where the crop is in its growing cycle
- Maintain farm facilities, including its water pipes, hoses, fences, and animal shelters
- Serve as the sales agent for livestock and crops
- Keep financial, tax, production, and employee records

American farmers, ranchers, and other agricultural managers produce enough food and fiber to meet the needs of the United States and for export. However, farm output and income are strongly influenced by weather, disease, fluctuations in prices, and federal farm programs.

Farmers, ranchers, and other agricultural managers monitor the constantly changing prices for their product. They use different strategies to protect themselves from unpredictable changes in the markets.

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<sup>4</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

Many farmers carefully plan the combination of crops that they grow, so if the price of one crop drops, they will have enough income from another crop to make up the loss. When farmers and ranchers plan ahead, they may be able to store their crops or keep their livestock to take advantage of higher prices later in the year.

Most farm output goes to food-processing companies. However, some farmers now choose to sell their goods directly to consumers through farmer's markets or use cooperatives to reduce their financial risk and gain a larger share of the final price of their goods. In community-supported agriculture, cooperatives sell shares of a harvest to consumers before the planting season to ensure a market for the farm's produce.

Farmers, ranchers, and other agricultural managers also negotiate with banks and other credit lenders to get financing because they must buy seed, livestock, and equipment before they have products to sell.

**Farmers and ranchers** own and operate mainly family-owned farms. They also may lease land from a landowner and operate it as a working farm.

The size of the farm or range determines which tasks farmers and ranchers handle. Those who operate small farms or ranges usually do all tasks. In addition to growing crops and raising animals, they keep records, service machinery, and maintain buildings.

Those who operate large farms, however, have employees—including agricultural workers—who help with physical work. Some employees of large farms are in nonfarm occupations, working as truck drivers, sales representatives, bookkeepers, and IT specialists.

Both farmers and ranchers operate machinery and maintain their equipment and facilities. They track technological improvements in animal breeding and seeds, choosing new products that might improve output.

**Agricultural managers** take care of the day-to-day operation of one or more farms, ranches, nurseries, timber tracts, greenhouses, or other agricultural establishments for corporations, farmers, or owners who do not live and work on their farm or ranch.

Agricultural managers usually do not do production activities themselves. Instead, they hire and supervise farm and livestock workers to do most daily production tasks.

Managers may determine budgets. They may decide how to store and transport the crops. They oversee proper maintenance of equipment and property.

The following are some types of farmers, ranchers, and other agricultural managers:

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**Crop farmers and managers**—those who grow grain, fruits and vegetables, and other crops—are responsible for all steps of plant growth. After a harvest, they make sure that the crops are properly packaged and stored.

**Livestock, dairy, and poultry farmers, ranchers, and managers** feed and care for animals. They keep livestock in barns, pens, and other well-maintained farm buildings. These workers also oversee breeding and marketing.

**Horticultural specialty farmers and managers** oversee the production of fruits, vegetables, flowers, and plants (including turf) used for landscaping. They also grow grapes, berries, and nuts used in making wine.

**Aquaculture farmers and managers** raise fish and shellfish in ponds, floating net pens, raceways, or recirculating systems. They stock, feed, protect, and maintain aquatic life used for food and for recreational fishing.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Farmers, Ranchers, and Other Agricultural Managers," <http://www.bls.gov/ooh/management/farmers-ranchers-and-other-agricultural-managers.htm#tab-2> (last visited August 20, 2013).

The duties the petitioner's president attributed to the proffered position are consistent with the duties of agricultural managers as described in the *Handbook*. On the balance, the AAO finds that the proffered position is an agricultural manager position as described in the Farmers, Ranchers, and Other Agricultural Managers chapter of the *Handbook*, and, more specifically, an Agricultural Manager position as described in that chapter.

The *Handbook* states the following about the educational requirements of Farmer, Rancher, and Other Agricultural Manager positions:

### **How to Become a Farmer, Rancher, or Other Agricultural Manager**

Farmers, ranchers, and other agricultural managers typically gain skills through work experience and usually have at least a high school diploma. Traditionally, experience growing up on or working on a family farm or ranch was the most common way farmers and ranchers learn their trade.

However, as farm and land management has grown more complex, more farmers, ranchers, and other agricultural managers now have a bachelor's degree in agriculture or a related field. In addition, a number of government programs help new farmers get training.

### **Education**

Most farmers, ranchers, and other agricultural managers have a high school diploma. Completing a degree at a college of agriculture is becoming important for workers who want to make a living from this occupation.

All state university systems have at least one land-grant college or university with a school of agriculture. Common programs of study include business with a concentration in agriculture, farm management, agronomy, dairy science, and agricultural economics.

At an agricultural college, students learn about crops, growing conditions, and plant diseases.

Prospective ranchers and dairy farmers, on the other hand, learn basics of veterinary science, including how pesticides can affect livestock.

### **Work Experience**

Prospective farmers, ranchers, and agricultural managers typically work and gain experience under more experienced farmers. Universities and forms of government assistance give prospective farmers alternatives to the traditional training method of being raised on a family farm.

Those without postsecondary education take a longer time to learn the more complex aspects of farming. A small number of farms offer formal apprenticeships to help young people learn the practical skills of farming and ranching. With government projects, such as Beginner Farmer and Rancher Competitive Grants Program, even those without any farm training can be paired with experienced farmers, learning through internships or apprentice programs.

### **Certification**

To show competency in farm management, agricultural managers may choose to become certified. The American Society of Farm Managers and Rural Appraisers (ASFMR) offers a farm manager accreditation to ASFMR members who have 4 years of work experience and a bachelor's degree. A complete list of requirements, including consultant course work and exams, is available from ASFMR.

### **Important Qualities**

**Analytical skills.** Farmers, ranchers, and other agricultural managers must monitor and assess the quality of their land or livestock. These tasks require precision and accuracy.

**Critical-thinking skills.** Farmers, ranchers, and other agricultural managers make tough decisions through sound reasoning and judgment. They determine how to improve their harvest and must react appropriately to weather conditions.

**Interpersonal skills.** Farmers, ranchers, and other agricultural managers supervise laborers and other workers, so effective communication is critical.

**Machine-operation skills.** Farmers, ranchers, and other agricultural managers—particularly those working on smaller farms—must be able to operate complex machinery and occasionally do routine maintenance.

*Id.* at <http://www.bls.gov/ooh/management/farmers-ranchers-and-other-agricultural-managers.htm#tab-4> (last visited August 20, 2013).

The Handbook indicates that farmers, ranchers, and other agricultural managers usually have at least a high school diploma. Although the *Handbook* states that more farmers, ranchers, and agricultural managers have a bachelor's degree in agriculture or a related field than did previously, and that such a degree is becoming "more important," it does not indicate that entry into such positions always, almost always, typically, or even usually requires such a degree.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of orchids, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty, or the equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, in determining whether there is a common degree requirement, factors often considered by USCIS 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner did submit two vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Greenhouse Horticulturalist/Orchid Grower for [REDACTED] requiring "a minimum of five (5) years of experience in greenhouse production with an emphasis on growing orchids preferred," and stating, "Bachelor's or Associate's degree in horticulture preferred"; and
2. Orchid Nursery Manager for [REDACTED] stating: "The ideal candidate would have a degree or diploma in Horticulture and at least three years of orchid growing and general management experience."

Neither of those vacancy announcements states a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent for the positions they announce.

Specifically, the first vacancy announcement states that a bachelor's degree *or an associate's degree* in horticulture is *preferred* for the position. The AAO observes, first, that a preference for a particular degree is not a minimum requirement. Further, a bachelor's degree is only one of the preferred degrees. An associate's degree, which is not at least equal to a bachelor's degree, is the other preferred degree for the position. That an associate's degree is acceptable for the position is another indication that it does not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, the second vacancy announcement states that the *ideal* candidate would have a degree or a diploma in horticulture, not that a degree or diploma is a minimum requirement. That an ideal candidate would have such a degree does not demonstrate that such a degree is a minimum requirement. Further, that vacancy announcement does not indicate that the preferred degree or diploma must be a minimum of a bachelor's degree, rather than, for instance, an associate's degree.

Further still, determining whether a position is a specialty occupation as defined in section 241(i)(1) hinges upon whether "attainment of a bachelor's or higher degree in the specific specialty (or its

(b)(6)

equivalent) [is] a minimum for entry into the occupation in the United States." Section 214(i)(1)(B) of the Act, set out above. The second vacancy announcement is for a position in New Zealand. As such, the educational requirements of that position are of no direct relevance to whether the proffered position qualifies as a specialty occupation pursuant to the statutes and regulations pertinent to the instant visa category, which all pertain to whether the position requires a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into the position *in the United States*.

Further, even if both of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry in the United States and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from two announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>5</sup>

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

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<sup>5</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of Head Grower of Orchids for firms similar to and in the same industry as the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that agricultural manager positions may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

(b)(6)

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Therefore, the evidence of record does not distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.<sup>6</sup>

In response to the RFE, counsel asserted that [REDACTED] previously performed the duties of the proffered position. On appeal, counsel asserted that [REDACTED] was "the only previous head grower in [the petitioner's] history." Counsel characterized [REDACTED] diploma as "the main proof that the [proffered] position is a specialty occupation."

The diploma provided shows that [REDACTED] has a bachelor's degree, but not the subject that was his major course of study. The evidence does not, therefore, show that [REDACTED] has a minimum of a bachelor's degree in a specific specialty closely related to the proffered position, or its

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<sup>6</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

equivalent. As such, it is not evidence that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the position.

For the reasons discussed, the petitioner has not provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>7</sup>

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

The duties of the proffered position contain no indication of a nature so specialized and complex that the knowledge required to perform those duties is usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The petitioner's president implied that inspecting orchid plants for insect infestation and disease and supervising planting and growing of orchids require a bachelor's degree in plant science or agricultural management, or the equivalent. That description of those duties, however, does not make clear that the duties require a minimum of a bachelor's degree in a specific specialty or its equivalent, or that they require more than the knowledge of orchids that might be obtainable by a few months of directed experience with them. Those duties, like the others described, do not contain detail sufficient to show that they require a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of agricultural manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

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<sup>7</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

As was noted above, the petitioner provided evidence that the beneficiary received a bachelor's degree in agricultural management from a university in Taiwan, Republic of China.

If a petitioner seeks to demonstrate that the beneficiary is qualified for a specialty occupation position based on a foreign education and degree, the petitioner must provide an evaluation of that foreign education and degree in terms of its equivalence to a U.S. education and degree. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

Without such an evaluation, the beneficiary's foreign degree is not acceptable as evidence that the beneficiary is qualified to work in any specialty occupation position. The petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.