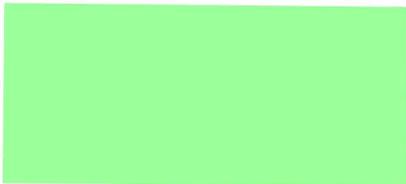


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

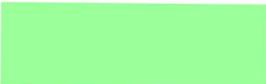


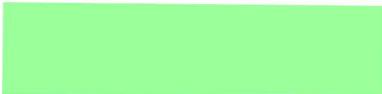
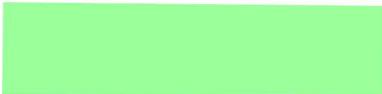
U.S. Citizenship
and Immigration
Services



Date: **MAY 31 2013**

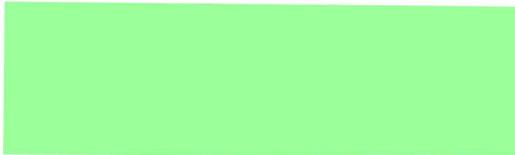
Office: CALIFORNIA SERVICE CENTER

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting 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, the petitioner describes itself as a "Greenhouse wholesale and retail, annuals and perennials" firm, with six employees, established in 1908. In order to employ the beneficiary in what it designates as an "Assistant Grower" position, the petitioner seeks 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 her 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 two requests for additional evidence (RFEs); (3) the petitioner's responses to the RFEs; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue on appeal 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 employment it is offering to the beneficiary meet 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 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 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, the 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 a particular position 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 submitted with the visa petition states that the proffered position corresponds to the Standard Occupational Classification (SOC) code and occupational title 45-1011.04, First-Line Supervisors or Manager Supervisors – Horticultural Workers.

With the visa petition, counsel submitted evidence to show that the beneficiary has a degree in agronomy awarded by [REDACTED]. An evaluation submitted states that the beneficiary's foreign degree is equivalent to a U.S. bachelor's degree in agronomy.

Counsel also submitted a letter, dated August 16, 2010, from the petitioner's owner, and 25 vacancy announcements. The vacancy announcements will be addressed below.

The petitioner's owner's letter states:

The Assistant Grower will be in charge of all technical aspects of growing bedding plants and potted crops for our retail and wholesale outlets. Reporting to the Grower, he will perform the following duties:

1. Maintain stock plants for vegetative (asexual) propagation from leaf cuttings, herbaceous stem cuttings and softwood stem cuttings. Maintain active, vigorous growth by timely applications of water and nutrients, remove dead or damaged plants or plant parts, adjust temperature and light intensity, control photoperiod (day length) by addition of lighting to extend the day, or pulling of shade cloths to decrease day length, to foster vegetative growth suitable for

cuttings. Monitor and control insect pests and diseases with timely and appropriate application of insecticides and fungicides, following both the label directions and the integrated pest management system in compliance with federal (E.P.A.), state and local (MN AG Dept.) law.

2. Conduct asexual reproduction of plants from leaf cuttings, herbaceous or softwood stem cuttings, tubers, bulbs, corns of fresh roots. Take cuttings and prepare for sticking by removing leaves or wounded stems. Apply plant growth hormones to enhance rooting and growth regulators to keep at the appropriate size. Monitor cuttings in propagation media, with appropriate labeling. Monitor cuttings for signs of water stress, disease or pests. Apply appropriate pesticides and fungicides, as per label directions and in compliance with applicable law.
3. Propagating plants from seeds (sexual propagation). Prepare seed-germination containers by sterilizing and filling with sterile germination medium. Sow seeds at densities appropriate to the species and cover appropriately. Monitor germination and growth, paying particular attention to the occurrence of damping off. Control disease (including damping off, botrytis) and pests with timely and appropriate application of fungicides and pesticides. Transplant seedlings as appropriate and continue to monitor growth and pests, applying water, nutrients and pesticides as required.
4. Transplant propagated materials into containers for finishing and sales.

As to the educational requirement of the position, the petitioner's owner stated that the petitioner requires a bachelor's degree in horticulture, agriculture, or a related field of study.

On November 17, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. That RFE characterized the proffered position as a "manager" position.

In response, counsel submitted; (1) an additional description of the duties of the proffered position; (2) an organizational chart of the petitioner's operation; (3) a list of three people who have held the proffered position and their educational backgrounds; (4) letters from three officials of other greenhouse operations; (5) letters from two professors; and (6) a letter, dated December 15, 2010, from the petitioner's owner.

The additional description of the proffered position states the following as the "Primary Duties" of the proffered position:

- Maintain stock plants for vegetative propagation
- Conduct asexual propagation
- Conduct propagation from seeds (sexual)
- Direct transplanting of all vegetative materials
- Inspect crops daily for pests and disease; diagnose and treat
- Conduct bi-weekly soil tests and adjust soils as needed
- Meet with head grower on a regular basis to discuss crop problems, crop progress and shipping schedules

That description of the proffered position also contains the following "Annual Schedule of Duties:

Propagation from seed (January-March)

- Initial soil tests for propagation
- Monitor germination levels and potential fungi concerns and treat appropriately
- Monitor fertilization and treat appropriately
- Monitor environmental factors, DIF¹
- PGR's [Plant Growth Regulators] as needed

Asexual Propagation (November-February)

- Select stock materials for propagation
- Use hormonal agents as needed for rooting
- Use fungicides as needed
- Use PGR's as needed
- Fertilize as needed
- Keep accurate records regarding royalty requirements

Stock Plant Production (September-February)

- Plant and monitor stock material
- Monitor soils, nutrition, and light levels for maximum propagation
- Monitor crops for pests and diseases using sticky tags and manual identification practices. Treat crops appropriately
- Biological controls when applicable
- Soil samples and appropriate adjustments

¹ The petitioner did not explain what it means by DIF.

Bedding Plant Production (March-June)

- Monitor Plant Production with emphasis on maximum florets for shipping schedule
- Monitor environmental factors with emphasis on hardening crops for finish
- Monitor stick tags and manually inspect crops for insects and diseases and treat appropriately
- Soil samples and adjust for finish
- Consult with Head Grower regularly to determine crop timing and shipping schedules

Perennial Production (March-October)

- Asexual propagation
- Monitor Soil Fertility and adjust accordingly
- Monitor for fungi with emphasis on weather conditions and treat appropriately
- Monitor for pests and rodents and treat appropriately
- Monitor weed control and apply herbicides as needed
- Consult with Head Grower regularly to determine crop timing and shipping schedules

Greenhouse Clean-up (July)

- Algaecides for clean-up of greenhouses

Poinsettia Productions (August-December)

- Bi-weekly soil samples and appropriate adjustments
- PH and acidity maintenance and appropriate adjustments
- Monitor growth curve. PGR's and DIF as needed
- Sticky tag and manual inspection for insects and diseases. Adjust appropriately.
- Consult with Head Grower regularly to determine crop timing and shipping schedules

Mum Production

- Asexual propagation
- Monitor light levels and fungicides
- Monitor pinching schedules and supervise pinching process
- Soil tests for nutrition, PH, acidity and adjust appropriately

- Monitor premature bud-sets and remove as needed
- Monitor sticky tags and manual observation for diseases, insects, rodents, and predators. Treat appropriately
- Consult with head grower regularly to determine crop timing and shipping schedules

Grape Production

- Monitor weeds and apply herbicides as needed.
- Monitor crops for disease, Insect pressures, rodents, and predators. Treat appropriately
- Training and pruning of vines
- Soil samples. Adjust appropriately for fertility, PH and acidity
- Monitor ripening and harvest timing
- Post-harvest pruning

General Duties

- Assist Head Grower and Greenhouse Manager in all other aspects of crop production as needed
- Weekly meetings with Head Grower and Greenhouse Manger to discuss current crop concerns

The organizational chart provided shows that the petitioner employs the petitioner's owner as its president and head grower, and that, in addition to the proffered assistant grower position, the petitioner employs, *inter alia*, a greenhouse manager, two grower technicians, and up to 12 general laborers.

The list of people who have worked in the proffered position shows that [REDACTED] who is now the petitioner's owner, president, and head grower, held the proffered position from January 1980 to February 2003, and has a bachelor's degree in environmental studies; that the person who previously worked in the proffered position had a bachelor's degree in agriculture science and worked in the proffered position from March 2003 to July 2008; and the person presently in the proffered position has a bachelor's degree in Biology and has held the position since January 2009. The AAO observes that, although the petitioner stated, on the Form I-129 visa petition, that it was founded in 1908, it provided no evidence pertinent to people who held the proffered position prior to 1980.

In addition to requesting a list of people who have worked in the proffered position, the RFE stated:

Further, submit documentation to establish how many of those persons have a baccalaureate degree or higher and the particular field of study in which the degree was attained. Documentation should include copies of transcripts . . . for the employees claimed to hold a baccalaureate degree in the specific field of study.

It is noted that the record does not contain evidence to corroborate the educational credentials of the three people whom the petitioner alleges have worked in the proffered position.

One of the letters provided from others in the petitioner's industry is from the president and CFO of [REDACTED] in Minneapolis, Minnesota, who claimed to know the petitioner's business very well, and stated that the proffered position requires a bachelor's degree in horticultural science or a related field. He did not reveal whether he is aware that only one of the past three people in the proffered position has had a degree that might be considered to be closely related to horticultural science, or whether he regards environmental studies, agricultural science, and biology to be "related" to horticulture within the context of his statement about the requirements of the proffered position.

The second letter was provided by the president of [REDACTED] of Lakeville, Minnesota, who stated that all of that company's assistant growers have bachelor's degrees in horticultural science, agricultural science, or a related field. He further stated that his company's products and procedures are very similar to the petitioner's, and concluded that the proffered position requires a bachelor's degree. Although he did not explicitly state that the proffered position requires a bachelor's degree in any specific specialty, he appears to imply that the requisite degree should be in horticultural science or agricultural science. He did not indicate whether he is aware that only one of the petitioner's last three assistant growers has had a degree in one of those areas.

The final letter from someone in the petitioner's industry is from the production manager of [REDACTED] in Minneapolis, Minnesota, who stated that he is also that company's head grower. He stated that the position of assistant grower at [REDACTED] requires a bachelor's degree, but not that it requires a bachelor's degree in any specific specialty. He further stated that all of [REDACTED] current assistant growers have a bachelor's degree or education and experience that his company considers equivalent to a bachelor's degree in horticulture, agriculture science, or a related field. He did not state how many people [REDACTED] employs in that position or identify them by name, and he did not provide evidence to corroborate his statement pertinent to their credentials. He did not describe what other education and experience his company considers equivalent to a bachelor's degree.

The petitioner also submitted a letter from a professor of horticulture at the [REDACTED]. It is dated August 14, 2001, nine years before the instant petition was filed, and was apparently prepared for use in another case. In that letter the professor stated that he had reviewed information pertinent to an assistant grower position with a company called [REDACTED] and that it is similar to other assistant grower positions about which he receives information from U.S. companies. He further stated that all of those announcements are seeking individuals with a bachelor's degree in horticulture.

The other letter from a professor is from an associate professor of horticulture at the [REDACTED]. It is dated August 3, 2001, and was also produced to be used in support of a visa petition

filed by [REDACTED] possibly the same case for which the previously described letter was produced. That professor stated that the responsibilities of that other assistant grower position require a bachelor's degree in horticulture or a related field.

In his December 15, 2010 letter, the petitioner's owner objected to the service center's categorization of the proffered position as a "manager" position, stating:

I believe you have misunderstood the nature of the position. Although the position requires giving work direction to two Grower Technicians, the essence of the [proffered] position is not management. Rather, it is the application of the principles of horticultural or agricultural science to the growth of flowers and plants in a greenhouse environment where all the elements of the growing environment are capable of adjustment and control according to the needs of the particular flower or plant that is being produced.²

The petitioner's owner also noted that two of the letters from other businesses in the petitioner's industry indicate that those businesses have received approval of H-1B visa petitions filed for assistant growers.³ The petitioner's owner stated that one of the petitioner's previous assistant growers was also approved for H-1B employment. He urged that the approval of those three visa petitions supports approval in the instant case.

As a preliminary matter, it is noted that the director's decision does not indicate whether she reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved a nonimmigrant petition on behalf of another beneficiary to work for the same petitioner, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic*

² The AAO observes, however, that the LCA submitted with the visa petition is certified for a position as a first-line supervisor or manager/supervisor of horticultural workers as classified under SOC code 45-1011.04.

³ Two letters do, in fact, indicate that the companies that supplied them have had H-1B visa petitions for assistant growers approved. They did not indicate, however, whether or not any of their visa petitions for assistant growers have been denied.

Orchestra v. INS, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Further, the underlying facts of those other H-1B cases are not established by any evidence in the record, and the record does not indicate, therefore, that the positions found to qualify for H-1B treatment in those other cases are so similar to the proffered position in the instant case that they must necessarily require the same education. Not only are those cases not binding, they have not been shown to have any relevance to the instant case.

On January 4, 2011, the service center issued another RFE in this matter. That RFE is identical to the previous RFE, to which counsel responded, except that it stated: "In response to the [previous RFE] the petitioner claims the position is not that of a manager[.] [It] appears from the record that the position being offered is that of a horticultural specialty farmer."

In a response dated January 14, 2011, counsel observed that the only difference between the two RFEs is that distinction noted above, and that relevant evidence had already been submitted in response to the first RFE.

The director denied the petition on March 8, 2011, 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 criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director indicated that she was analyzing the proffered position as a horticultural specialty farmer position as described in the Farmers, Ranchers and Agricultural Managers section of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*.

On appeal, counsel contends that the evidence previously submitted is sufficient to show that the instant visa petition should be approved.

To make its determination whether the proffered position qualifies as 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 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 *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)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴

On the LCA, as was noted above, the petitioner stated that the proffered position is a first-line supervisor or manager/supervisor – horticultural workers position. Subsequently, in his December 15, 2010 letter, the petitioner's owner asserted that the proffered position is not a management position as such, but that the essence of the proffered position is applying the principles of horticultural and agricultural science to the growth of flowers and plants in a greenhouse environment. The AAO concurs with the petitioner that the duties of the proffered position, as described, bear little resemblance to a managerial or supervisory position. The significance of the petitioner's acknowledgement that the position described in the LCA does not correspond to the proffered position, as described in the visa petition and supporting materials, will be addressed below.

The *Handbook* does not include a section which addresses greenhouse plant propagation positions in detail, nor does it have a section directly related to those who supervise greenhouse workers.

The *Handbook* chapter entitled "Farmers, Ranchers and Other Agricultural Managers" describes those occupations as follows:

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

⁴ 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.

- 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.

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:

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 May 29, 2013).

The AAO finds that the proffered position is a horticultural specialty farmer position as described in the "Farmers, Ranchers and Other Agricultural Managers" chapter of the *Handbook*.

The *Handbook* states the following about the educational requirements of farmer, rancher, and other agricultural manager positions, including horticultural specialty farmer positions:

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.

Id. at <http://www.bls.gov/ooh/management/farmers-ranchers-and-other-agricultural-managers.htm#tab-4> (last visited May 29, 2013).

Although the *Handbook* indicates that completing a degree is "becoming important," it does not indicate that a minimum of a bachelor's degree in a specific specialty or its equivalent is a minimum requirement for entry into farmer, rancher, and other agricultural manager positions, including horticultural specialty farmer positions. In fact, to the contrary, it indicates that most such workers have a high school diploma. The *Handbook* does not support the proposition that the specific position offered in the instant case normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

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 technical knowledge of horticulture, but do not establish any particular level of formal 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, or the equivalent, in a specific specialty, 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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations 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.

As was observed above, the record does contain three letters from others in the petitioner's industry, and two letters from professors of horticulture.

One of the industry letters states that the proffered position requires a bachelor's degree in horticultural science or a related field. He did not indicate what other fields he would consider to be "related" to horticulture. As was observed above, the petitioner has employed people in the proffered position who had degrees in environmental science, agricultural science, and biology. Of those, the most closely related to horticulture is agricultural science, and, as was stated above, it is not sufficiently closely related to be within the same specific specialty. Whether, by a "related" degree, the writer meant only a subject such as botany, which might, arguably, be considered to be within the same specialty as horticulture, is unclear. It is also unclear whether he would have included such subjects as agriculture, biology, and environmental science, which are not sufficiently closely related to horticulture to delineate, when combined with horticulture, a specific specialty. Whether the writer indicated that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent is also, therefore, unclear.

Another industry letter implied that the proffered position requires a minimum of a bachelor's degree in horticultural or agricultural science. As was explained above, horticulture and agriculture do not delineate a specific specialty. As such, that letter did not state, nor even imply, that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The final industry letter stated that all of [REDACTED] current assistant growers have a bachelor's degree or education and experience that his company considers equivalent to a bachelor's degree in horticulture, agriculture science, or a related field. Horticulture, agricultural science, and all "related" fields do not, in the aggregate, delineate a specific specialty. Further, what education or experience the hiring authority at [REDACTED] might consider to be equivalent to a bachelor's degree in one of those subjects was not revealed. That letter does not assert that the proffered position or parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

One of the professors of horticulture asserted that all of the letters he receives seeking an assistant grower are seeking someone with a degree in horticulture. That professor's letter does not establish that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common among parallel positions with similar organizations in the petitioner's industry, especially as there is no indication that the professor, who wrote his letter on August 14, 2001, nine years before the instant visa petition was filed, reviewed the duties of the proffered position or had any opinion pertinent to those duties or the proffered position.

The other professor whose letter was provided in this case also wrote his letter nine years before this case was filed. He did not apparently review the duties of the proffered position or have any insight into, or opinion about, its educational requirements. Further, although he asserted that the position about which he was opining, which was also designated an "assistant grower" position, required a bachelor's degree in horticulture or a related field, what fields he would designate as related is unclear. That professor did not make clear that the position he was discussing required a minimum of a bachelor's degree in a specific specialty or its equivalent, and expressed no opinion at all about the proffered position.

Counsel provided 25 vacancy announcements, as was stated above. Many of those announcements appear to be duplicative, that is, they do not appear to refer to 25 different jobs. Those announcements are for positions entitled Grower/Supervisor, Greenhouse Grower, Assistant Greenhouse Grower, Production Manager, Grower, Assistant Growers, Floriculture Plant Manager, Lead Propagator, Flower Breeder, Greenhouse Production Manager, Head Grower, Ornamental Production Manager, Horticulture Production Manager, Horticulture Production Assistant, Plant Breeder, Grower/Assistant Manager, and Production Supervisor/Grower.

None of the job descriptions contained in those announcements are sufficiently detailed and sufficiently similar to the description of the duties of the proffered position to establish that they are positions parallel to the proffered position. Whether the organizations offering those positions are similar to the petitioner in all salient respects is also unclear.

Some of the announcements provided state that the positions they announce require a bachelor's degree in ornamental horticulture or a related field. The AAO finds that requirement is specific enough that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent.⁵

⁵ That is, a field related to ornamental horticulture is likely to be within horticulture.

One of the vacancy announcements provided states that the position it announces requires a bachelor's degree in plant breeding or a related discipline. The AAO finds that requirement is specific enough that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Some of the announcements provided state that the positions they announce require degrees in horticulture. Those announcements require degrees in a specific specialty, but do not make clear that the requisite degrees must be a minimum of a bachelor's degree.

One of those announcements states that the position it announces requires a bachelor's degree in horticulture or a related agricultural field. Whether the position announced in that announcement requires a minimum of a bachelor's degree in a *specific specialty* or its equivalent is unclear.

One of those announcements states that the position announced requires a bachelor's degree in horticulture or a related field. Again, what fields the hiring authority would consider to be sufficiently closely related is not established. Whether the position announced requires a minimum of a bachelor's degree in a specific specialty or its equivalent within the meaning of the regulations is not established.

Some of those announcements state that the positions they announce require a bachelor's degree in horticulture or an equivalent combination of education and experience. What combination of education and experience the hiring authorities of the companies that placed those announcements would consider to be equivalent to a bachelor's degree is not stated. Whether the positions announced require a minimum of a bachelor's degree in a specific specialty or its equivalent within the meaning of the regulations is unclear.

One of the announcements states that the position it announces requires a college education, but not that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent, or any bachelor's degree, or any degree at all.

Some of the announcements state that the positions they announce require bachelor's degrees, but not that the requisite degrees must be in any specific specialty.

Some of the vacancy announcements provided are insufficiently legible for the AAO to determine the educational requirements they assert. Those announcements will not be considered.

Further, even if all of the vacancy announcements were for positions parallel to the proffered position with companies similar in all salient respects to the petitioner, which they have not been shown to be, and unequivocally stated a minimum of a bachelor's degree in a specific specialty or its equivalent to be a prerequisite for the vacancies they announce, which they do not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from that limited

number of announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁶

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficit of every vacancy announcement has been addressed.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and 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."

The record contains no evidence that would differentiate the work of the proffered position from the work of horticultural specialty farmer positions in general. The duties of the proffered position (such as maintaining stock plants, conducting sexual and asexual propagation, transplanting, inspecting and treating for disease, conducting soil tests, and adjusting soil accordingly) are described in terms of generalized functions generic to horticultural specialty farmer positions in general, and so have not been shown to be more complex or unique than the duties of other horticultural specialty farmer positions, some of which, the *Handbook* indicates, may not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Moreover, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. While a few related courses

⁶ 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 the job postings provided with regard to determining the common educational requirements for entry into parallel positions in similar greenhouse operations. *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 horticultural specialty farmer or assistant grower for a greenhouse growing company 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 may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

may be beneficial in performing some of the proposed duties, 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 proffered position. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Thus, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO will consider the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is 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.

The record contains evidence pertinent to three people the petitioner claims to have employed in the proffered position, and degrees the petitioner claims they were awarded. Despite an explicit request, the petitioner did not provide evidence to corroborate that they have the claimed degrees.

Further, the three people whom the petitioner identified as having previously worked in the proffered position had degrees in environmental studies, agriculture science, and biology. None of those subjects is confined to growing plants and they are not so closely related that they delineate a specific specialty.

The evidence presented does not indicate that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁷

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. Maintaining stock plants; conducting sexual and asexual

⁷ 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 the 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").

propagation; transplanting; inspecting and treating crops for disease and parasites; conducting soil tests, and appropriately adjusting soils have not been shown to be so specialized and complex that they require knowledge usually associated with attainment of 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 horticultural specialty farmer positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, 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.

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1) in pertinent part as follows:

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.

The regulations require that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified LCA from the DOL in the occupational specialty in which the H-1B worker will be employed. *See* 8 C.F.R. §§ 214.2(h)(4)(i)(B) and 214.2(h)(4)(iii)(B)(1). The instructions that accompany the Form I-129 also specify that an H-1B petition must be filed with evidence that an LCA has been certified by DOL.

Moreover, while DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.*

The regulation at 20 C.F.R. § 655.705(b) therefore requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary.

In the instant case, the LCA provided is certified for a supervisor/manager position, and the petitioner's owner has asserted that it is not such a position, but a position chiefly concerned with horticulture. The petitioner's owner confirmed that it is not chiefly a managerial position when he stated, in his December 15, 2010 letter:

The essence of the [proffered] position is not management. Rather, it is the application of the principles of horticultural or agricultural science to the growth of flowers and plants in a greenhouse environment.

Thus, the record establishes that, at the time of filing, the petitioner had not obtained a certified LCA in the occupational specialty for the requested employment for the beneficiary. Therefore, the petitioner has failed to comply with the filing requirements at 8 C.F.R. § 214.2(h)(4)(i)(B) and 214.2(h)(i)(2)(B) by providing a certified LCA that corresponds to the instant petition. For this additional reason, the petition may not be approved.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

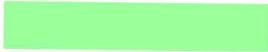
As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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 director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition

(b)(6)



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proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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