D2

U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN-01-250-56005 Office: Nebraska Service Center Date: JAN 06 2003

IN RE: Petitioner:
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)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a nursery and greenhouse with 250 employees and a stated gross annual income in excess of $1 million. It seeks to employ the beneficiary as an assistant grower for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director determined that the proffered position was not a specialty occupation because it did not require the services of an individual possessing at least a four-year baccalaureate degree. On appeal, counsel argues that the Service ignored evidence that the petitioner normally requires a degree for employment in the proffered position. Counsel asserts that the duties of the offered position are so complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel contends that the Service also ignored evidence that the degree requirement was an industry standard for similar positions.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The Service considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> ...managing inventory & growth of plants at landscape nursery/greenhouse; oversee germination and health of plants through entire developmental process, including

soil assessment, disease control and supervision of workers.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

3. The employer normally requires a degree or its equivalent for the position; or

4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

While the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, does not provide a listing for the position of an assistant grower, this publication does list the position of nursery and greenhouse manager under the occupation category of "Farmers, Ranchers, and Agricultural Managers" at pages 47-50. The Handbook indicates that a bachelor's degree in business with a concentration in agriculture, or related degree, is important for employment as an agricultural manager. In addition to a formal education, several years of work experience in the different aspects of farm and ranch operations are needed in order to qualify for an agricultural manager position. The Handbook states:

> Not all agricultural managers grew up on farms or ranches. For these people a bachelor's degree in business with a concentration in agriculture is important. In addition to formal education, they need several years of work experience in the different aspects of farm and ranch operations in order to qualify for an agricultural manager position.
>
> ...Completion of a 2-year degree, and preferably a 4-year bachelor's degree program in a college of agriculture is becoming increasingly important. But even after obtaining formal education, novices may need to spend time working

> under an experienced farmer to learn how to put into practice the skills learned through academic training.

Clearly, formal education is becoming increasingly, if not equally, important to significant work experience for an agricultural manager position. It is noted that not all agricultural manager positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties.

In this instance, the petitioner has submitted the transcripts and diplomas of both its current head grower and assistant grower. The individual employed in the position of head grower possesses a bachelor of science degree in liberal arts with a major in biology and minor in horticulture from the University of Wisconsin-River Falls. The individual employed in the position of assistant grower holds a degree in agronomic engineering from Maringa State University in Brazil, which has been found to equate to a bachelor of science degree in agricultural engineering from an accredited academic institution in the United States. The evidence contained in the record tends to establish that the petitioner normally requires a degree or its equivalent for the proffered position.

In addition, the petitioner has submitted numerous job listings for grower and assistant grower positions with seed companies, nurseries, and commercial greenhouses. The majority of these advertisements list a minimum degree requirement of a bachelor's degree in horticulture or a related agricultural field for employment in such positions. The record also contains a letter from [redacted] Ph.D. Assistant Professor and Nursery Management Specialist at the University of Minnesota in St. Paul, Minnesota. Professor [redacted] reiterates the duties of the offered job and notes the following:

> [i]n today's marketplace, commercial nursery and greenhouse operations are requiring people performing these duties to possess a baccalaureate degree in horticulture, agronomy, or a related field.

Counsel submits copies of pertinent pages from the United States Office of Personal Management's Operating Manual. The information contained in this document shows that a bachelor of science degree in horticulture, agronomy, or a related agricultural field is the minimum degree requirement for employment in entry-level horticulturist or agronomist positions within the federal government. The petitioner has provided sufficient evidence to confirm that the degree requirement is common to the industry in parallel positions among similar organizations. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

The record indicates that the beneficiary received a diploma from the Luiz Meneghel Agronomy School Foundation in Bandeirantes, Brazil, for the successful completion of its agronomy program. The beneficiary's education has been determined to be the equivalent of a bachelor of science degree in agronomy as awarded at an institution of higher learning in the United States. Therefore, the beneficiary is qualified to perform the duties of this specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.