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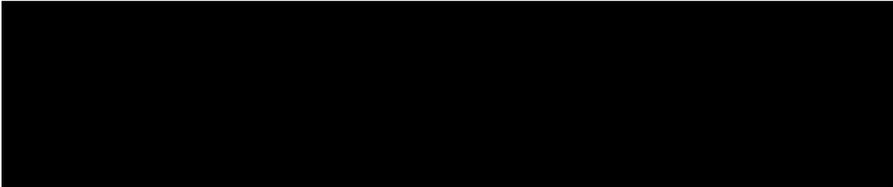
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
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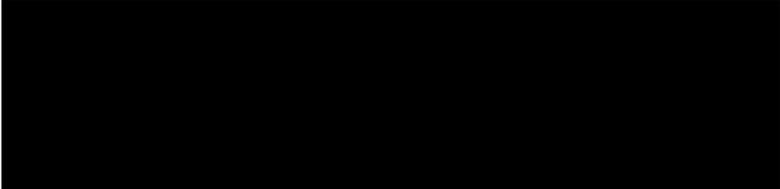


FILE: LIN 05 231 50864 Office: NEBRASKA SERVICE CENTER Date: DEC 04 2006

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:

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

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a real estate company that seeks to employ the beneficiary as an urban planner and chief investment officer. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition finding that the proposed position is not a specialty occupation. Counsel submitted a timely appeal.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

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

The petitioner is seeking the beneficiary's services as an urban planner and chief investment officer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail developing long-term and short-term plans for land use and physical facilities for the petitioner's multi-million dollar complex infrastructure and urban development projects; conducting extensive studies of existing conditions and trends that may affect projects in South Florida, including analyzing population trends and economic growth in the area, estimating the long-range need for residential and commercial development, and investigating property availability; evaluating economic studies on the feasibility of projects and making recommendations to the board of directors defining the projects to be developed; raising private equity funds for the development of projects; investigating property availability for future projects; preparing proposals to local authorities for approval; determining the environmental impact of projects and meeting with property owners, government officials, and consultants to discuss problems and solutions; working with urban planners, transportation planners, and environmental scientists and engineers regarding development planning, environmental impact assessment, re-zoning, stakeholder consultation, and market development; and managing projects and bids. For the proposed position the petitioner requires a bachelor's degree or the equivalent in architecture, urban planning (studies), environmental studies, or a related field.

In denying the petition the director found that the proposed duties reflect those of a financial advisor and project manager as described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that such positions do not require a bachelor's degree in a specific specialty. According to the director, the *Handbook* indicates that the petitioner does not conduct the type of business that typically requires the services of an urban planner.

On appeal, counsel states that the beneficiary will occupy a managerial position that qualifies as a specialty occupation. Counsel asserts that the proposed position requires knowledge of architectural design, urban planning, building technology, and financial investment. Counsel states that the beneficiary's duties are not limited to urban planning and that urban planners are not primarily employed by state government and private consulting firms.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Based on the beneficiary's job description and the supporting evidence in the record, including company brochures, meeting minutes, and the document entitled "Monthly Construction Report, April 2005," the AAO finds that the proposed duties are so specialized and complex that they require the knowledge associated with the attainment of a baccalaureate or

the equivalent in architecture, urban planning (studies), environmental studies, or a related field. Accordingly, the petitioner establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO will now consider whether the beneficiary is qualified to perform the duties of the proposed position.

The record contains the English translation of a document which indicates that on November 6, 1984 the beneficiary was conferred the title of "architect" at the University of Chile. The record also includes an educational evaluation from Morningside Evaluations and Consulting; it states that the beneficiary's diploma in architecture degree from University of Chile is the educational equivalent of a bachelor of science degree in architecture from an accredited institution of higher education in the United States. Thus, the submitted evidence reflects that the beneficiary is qualified to perform the duties of the proposed position.

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.

ORDER: The appeal is sustained. The petition is approved.