

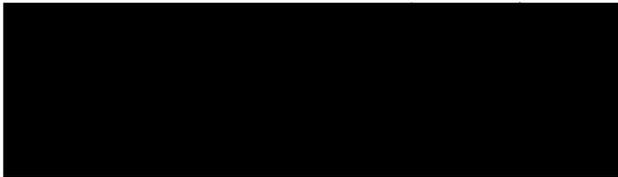
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FILE: LIN 04 260 53003 Office: NEBRASKA SERVICE CENTER Date: MAR 02 2007

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:  
[Redacted]

**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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. Upon review of the record and information submitted by counsel, the AAO on its own motion reopens the matter for consideration of the merits of the matter. Upon consideration of the appeal, the appeal will be dismissed, and the petition will be denied.

The petitioner develops and manages commercial and residential properties. It seeks to employ the beneficiary as a real estate manager. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 record of proceeding before the AAO contains: (1) the September 23, 2004 Form I-129 and supporting documentation; (2) the director's February 8, 2005, request for evidence (RFE); (3) counsel for the petitioner's March 16, 2005 response to the director's RFE; (4) the director's June 17, 2005, denial letter; (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

On June 17, 2005, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation.

The petitioner, on the issue of whether the duties of the position comprise a specialty occupation, must establish that the job it is offering to the beneficiary meets 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) 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.

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.

CIS interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS 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. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). 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.

In its September 20, 2004 letter in support of the petition, the petitioner stated that it required the services of a real estate manager. The petitioner indicated:

The Real Estate Manager will have professional responsibility and authority to manage all of the commercial and residential real estate properties mentioned in the [petitioner's portfolio of properties]. The Manager will have professional responsibility and authority to prepare lease or rental agreements for lessees, and will be responsible for the collection of rents and incidental management fees.

The Real Estate manager will direct and implement the preparation of computerized financial statements and reports on the status of portfolio properties, such as occupancy rates and dates of expiration of leases. The Manager will conceptualize and direct the implementation of computerized procedures for all of [the petitioner's] accounting and administrative functions. The Manager will be responsible for making and documenting disbursements (such as mortgage, taxes, and insurance premium payments, and management services costs), and will be responsible for managing and monitoring maintenance expenditures on all portfolio assets.

The Real Estate Manager will have professional responsibility and authority to make arrangements for any alterations, maintenance, or reconditioning activities concerning portfolio properties, and will contract for security, maintenance, and grounds keeping services. The Manager will be responsible for the purchases of supplies and equipment necessary for the use and upkeep on portfolio properties. Finally, the Manager will have professional responsibility and authority to advise me on activities such as the financing, purchasing, or selling of investments and investment properties. In order to perform these duties, the Real Estate Manager should possess a Master's degree (or its equivalent) in Business Administration.

In a February 8, 2005 RFE, the director indicated that the description of the duties did not clearly qualify the position as a specialty occupation. The director referenced the Department of Labor's *Occupational Outlook Handbook's (Handbook)* discussion of property, real estate or community association managers, and noted that the *Handbook* did not report that a baccalaureate or higher degree in a specialized area would be required for any of these positions. The director requested evidence that the proffered position satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In a March 16, 2005 response, counsel for the petitioner took issue with the director's recitation of the *Handbook's* discussion of property, real estate, or community association managerial occupations.<sup>1</sup> Counsel stressed that the *Handbook* does not include language that indicates a baccalaureate or higher degree "in a specialized area" is required for a property, real estate, or community association managerial occupation. Counsel emphasized that the *Handbook* reports: "Entrants with degrees in business administration, accounting, finance, real estate, public administration, or related fields are preferred" for property management positions. Counsel also contended that there is no basis from the text of the regulations to justify the addition of language that a degree must be "in a specialized area" and cites 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), in support of the contention. Counsel further noted that the petitioner's educational requirement for the proffered position is a master's degree or its equivalent in business administration and states that this fact is not at issue. Counsel also cited an unpublished decision to demonstrate that the AAO incorporates the normal educational requirement reported in the *Handbook* to determine the degree requirement in a specialty occupation. Counsel contended that the *Handbook's* reference to a college degree in business administration as one of the degrees that is acceptable for the occupation of property, real estate, or community association manager is confirmation that this is the normal minimum educational requirement for the position. Counsel concluded that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position of real estate manager.

In the June 17, 2005 decision, the director observed that the Act defines the term "specialty occupation" as an occupation that requires: the theoretical and practical application of a body of highly specialized knowledge,

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<sup>1</sup> Counsel misunderstands the director's reference to good speaking, writing, computer and financial skills as well as an ability to tactfully deal with people, which is part of the *Handbook's* discussion of skills that are as important as a degree in a specialized area for the occupation of property, real estate, or community association managers. Counsel mistakenly assumes that this reference is a reference to the regulatory or statutory discussion of a specialty occupation.

and 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 director determined that the *Handbook* did not report that a baccalaureate degree was required for the proffered position, although some employers might prefer the successful applicant to have a college degree. The director also determined: that the petitioner had not presented evidence that the petitioner had required a baccalaureate degree or higher for the proffered position in the past; that businesses similar to the petitioner required the services of individuals with specialized degrees in parallel positions; or that the duties of the position were so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree or higher. The director concluded that the petitioner had not established that the position satisfied one of the criteria necessary to establish the position as a specialty occupation.

On appeal, counsel for the petitioner again asserts that the director "added restrictive verbiage to the regulatory criteria for specialty occupations in H-1B petitions without any justification, rationale, or citation to authority. Counsel specifically takes issue with the director's requirement that a baccalaureate or higher degree or its equivalent must be "in a specialized area" in order to find that a position is a specialty occupation. Counsel also asserts that the director distorted the language found in the *Handbook* regarding the real estate industry's educational requirements for the proffered position.

Counsel's assertions are not persuasive. As observed above, CIS has consistently interpreted 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 very nature of the statutory definition at section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1),) requires the theoretical and practical application of a body of highly specialized knowledge and the 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. Thus, for the proffered position to be considered a specialty occupation, the position must require specialized knowledge and a bachelor's or higher degree in a specific specialty that directly relates to the position requiring the specialized knowledge.

When a job, like that of a real estate manager, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. The director did not add restrictive verbiage to the statutory criteria and based her decision on CIS' long held interpretation of the Act and regulations that the proffered position must require a degree in a specific specialty directly related to the proffered position.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the Department of Labor's *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states the following with regard to the employment of real estate managers, the proffered position in this matter:

*Property and real estate managers* oversee the performance of income-producing commercial or residential properties and ensure that real estate investments achieve their expected revenues.

\* \* \*

Generally, property and real estate managers handle the financial operations of the property, ensuring that rent is collected and that mortgages, taxes, insurance premiums, payroll, and maintenance bills are paid on time. . . . Some property managers, called asset property managers, supervise the preparation of financial statements and periodically report to the owners on the status of the property, occupancy rates, expiration dates of leases, and other matters.

Regarding the educational requirements of this occupation, the *Handbook* reports:

Most employers prefer to hire college graduates for property management positions. Entrants with degrees in business administration, accounting, finance, real estate, public administration, or related fields are preferred, but those with degrees in the liberal arts also may qualify. Good speaking, writing, computer, and financial skills, as well as an ability to deal tactfully with people, are essential in all areas of property management.

Many people enter property management as onsite managers of apartment buildings, office complexes, or community associations or as employees of property management firms or community association management companies. As they acquire experience working under the direction of a property manager, they may advance to positions of greater responsibility at larger properties. Those who excel as onsite managers often transfer to assistant property manager positions, in which they can acquire experience handling a broad range of property management responsibilities.

\* \* \*

Although many people entering jobs such as assistant property manager do so by having previously gained onsite management experience, employers increasingly are hiring inexperienced college graduates with bachelor's or master's degrees in business administration, accounting, finance, or real estate for these positions. Assistants work closely with a property manager and learn how to prepare budgets, analyze insurance coverage and risk options, market property to prospective tenants, and collect overdue rent payments. In time, many assistants advance to property manager positions.

Based on the above, the *Handbook* describes several avenues that lead to the position of a real estate manager. Although many employers may prefer to hire college graduates, the *Handbook* recognizes that many individuals become property managers by gaining experience as assistant property managers or as onsite property managers under the supervision of a property manager. More importantly, the *Handbook* recognizes that there are many fields of study that enable a prospective real estate manager to perform the duties of the position. Again, when a job can be performed by a range of degrees or a degree of generalized title, without

further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Moreover, preference for a college graduate to perform the duties of a particular position is not synonymous with requiring the successful applicant to have obtained a four-year university degree and is not synonymous with requiring the successful applicant to have obtained a four-year degree in a specific specialty. The record does not establish that the proffered position is a specialty occupation as defined by the Act. The record does not establish that the proffered position requires a baccalaureate or higher degree or its equivalent as normally the minimum requirement for entry into the proffered position as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position under the second criterion, whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by CIS when determining the industry standard include: 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 observed above, the *Handbook* does not indicate that a bachelor's degree or its equivalent is required for employment as a real estate manager or distinguish the field of property management as an occupation requiring a bachelor's degree or its equivalent.

The petitioner has not submitted job announcements for this position to establish that the petitioner's degree requirement is the norm within its industry in parallel positions among similar organizations. Nor does the petitioner present information establishing that the industry's professional associations require a degree for the position of real estate manager or that property management companies "routinely employ and recruit only degreed individuals," in a specific discipline for the proffered position. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner's description of the daily duties of the position does not establish that the proffered position would involve duties seen as either unique or complex. For example, there is no evidence that "prepar[ing] lease or rental agreements for lessees," "collect[ing] rents and incidental management fees," prepar[ing] computerized financial statements and reports on the status of portfolio properties, such as occupancy rates and dates of expiration of leases," is of sufficient complexity that to perform the duties, the incumbent would need a four-year degree. In addition, the petitioner has not established that making and documenting disbursements, managing and monitoring maintenance expenditures, and arranging for alterations, maintenance, reconditioning the properties or purchasing supplies and equipment involve duties that require a four-year college degree. The duties described do not comprise duties so unique or complex that only a degreed individual could perform them. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) which provides that an employer establish that it normally requires a degree or its equivalent for the position. The AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas to assist in assessing this criterion. In this matter, the petitioner's president indicated that she had performed all of the business and administrative duties and responsibilities of the petitioner and that independent contractors had performed all other labor. Although the record suggests that the position is a new position, the petitioner does not provide documentary evidence that establishes that the individual (the petitioner's president) who previously performed the duties of the position possessed a four-year degree in a specific discipline.

The AAO finds, as well, that while a petitioner may believe that a proffered position requires a degree, its opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. The petitioner has not provided evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) which requires that the petitioner establish that 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. The information provided regarding the specific duties of the petitioner's real estate manager does not demonstrate how the duties are specialized or complex or otherwise establish that the knowledge required to perform the duties of the proffered position are usually associated with the attainment of a baccalaureate or higher degree. The record does not offer adequate evidence that distinguishes the duties of the proffered position from those performed by a non-degreed property manager. Accordingly, the petitioner has failed to demonstrate that the duties of the position are so specialized and complex that their performance is usually associated with the attainment of a baccalaureate or higher degree as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the totality of the record, the record fails to reveal any evidence that the offered position requires a bachelor's degree, or its equivalent, in a specific discipline. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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