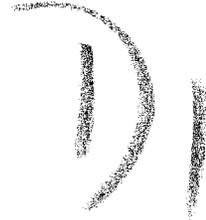




U.S. Citizenship
and Immigration
Services

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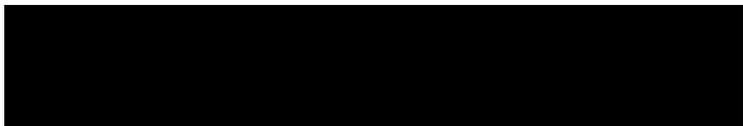
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FILE: WAC 03 121 51030 Office: CALIFORNIA SERVICE CENTER Date:

JUL 25 2005

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:

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, Director
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.

The petitioner is a real estate marketing, management, and investment firm that seeks to employ the beneficiary as a property development manager. The petitioner 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 because the proffered position does not qualify as a specialty occupation. On appeal, the petitioner submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a property development manager. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- (30 per cent of the time) identify suitable properties for purchase/investment taking into consideration land-use, zoning, price, market conditions, environmental and other factors impacting profit potential;
- (20 per cent of the time) prepare feasibility studies addressing issues;
- (20 per cent of the time) contact property owners and enter into preliminary investigations as to availability and terms;
- (20 per cent of the time) arrange with architects, engineers, planners and other professions in order to move a project beyond acquisition to completion; and
- (10 per cent of the time) direct accounting functions and prepare reports.

The petitioner does not state that it requires a bachelor's degree in any specific discipline for entry into the proffered position. It deems the petitioner qualified, however, by virtue of her foreign education (determined to be equivalent to a bachelor's degree in hotel and restaurant management in the United States by a credentials evaluation service) and past work experience.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether

an industry 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)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those noted for property and real estate managers. The *Handbook* states that 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 holding degrees in the liberal arts may also qualify. The *Handbook* notes that degree holders are preferred in the industry, not required. Furthermore, the degrees preferred are not in a specific specialty, but from a wide range of unrelated disciplines such as business, public administration or the liberal arts. The petitioner has failed to establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner makes reference to Department of Labor publications and related Job Zone classifications and SVP ratings for particular positions to establish a degree requirement for the offered position. The petitioner’s assertions in this regard are not persuasive. Neither the *Dictionary of Occupational Titles (DOT)* SVP rating nor a Job Zone category indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. In support of this assertion the petitioner submitted copies of three job advertisements for property management positions, and a position evaluation opinion from Dr. Kenneth E. Knight, Professor of Management and Information Systems, Seattle Pacific University. One of the job advertisements indicated that a bachelor’s degree in an unidentified discipline was preferred, not required, for the position. A second advertisement states that a bachelor’s degree is required, but does not indicate that the degree need be in any particular educational discipline. The third advertisement requires a degree in business, finance, construction management or real estate. Three advertisements are not sufficient in scope to establish an industry educational standard for the offered position. Furthermore, the advertisements tend to confirm the *Handbook’s* statements concerning the educational requirements for property managers, that positions expressing a preference for a degreed individual find acceptable degrees in a wide range of unrelated disciplines. The advertisements submitted do not establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Dr. Knight states that it is an industry standard for a property development manager to possess a bachelor’s degree in business administration or a related field. Dr. Knight does not, however, cite any industry study, survey, labor market information, or other basis for his opinion except his personal education and experience. The opinion is contrary to the information contained in the *Handbook* in that the *Handbook* does not indicate

that a degree is normally required for similar positions in the industry, or that there is any particular educational discipline preferred in the industry. The *Handbook* notes that degrees in a wide range of educational disciplines will qualify individuals for property management/development positions in those positions that actually require a degree. Dr. Knight's opinion will, therefore, be given little weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The submitted opinion does not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

It should also be noted that for a position to qualify as a specialty occupation, there must be a close corollary between the required specialized studies and the position offered. A degree of generalized title, such as business administration, without further specification, would not qualify the beneficiary to perform the duties of a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Nor would a position that required a degree of generalized study qualify as a specialty occupation. For example, the record does not establish that the offered position requires a degree in business administration with an emphasis in a specialized area of study such as real estate, marketing or finance. For this additional reason, the aforementioned opinion will be given little weight.

The petitioner states that it normally requires a degree or its equivalent for the proffered position. The petitioner did not, however, submit any evidence to support its claim. Simply going on the 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 190 (Reg. Comm. 1972)). Further, 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 (5th Cir. 2000). The critical element is not the title of the position or 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.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties are routine for the position in the industry. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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