

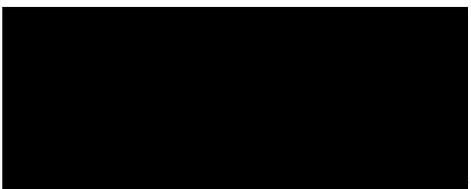
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: WAC 01 106 51648

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

DEC 22 2003

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)

IN BEHALF OF PETITIONER:



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 Citizenship and Immigration Services (CIS) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director of the California Service Center 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 management company owned and operated by one individual. It has a gross annual income of \$1,000,000. It seeks to employ the beneficiary as an administrative analyst. The acting director denied the petition because she found that the proffered position was not a specialty occupation.

On the Form I-290B, counsel notes that a brief would be submitted within sixty days. To this date, however, no brief has been received. The record is thus considered to be complete, and the appeal shall be adjudicated based on the statements counsel makes on the Form I-290B. Counsel states, in part, that the proffered position is so complex that it requires the services of an individual with a bachelor's degree or higher.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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:

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.

In the original petition filing, the petitioner described the proffered job duties thusly:

Under close supervision of the company's owner/operator assist in coordinating office services, such as personnel, budget preparation and control. Participates in studying managing methods in order to improve workflow, simplify reporting procedures, and implementing [sic] cost reductions. Assist in analyzing unit operating practices, such as record keeping systems, form control, suggestion systems, personnel & budgetary requirements and performance standards to create new systems or revise established procedures. Assist in methods of improving work measurement or performance standards. Assists in the preparation of reports including conclusions and recommendations for solution of administrative problems. Compile, store and retrieve management

data[,] applying knowledge of computer software programs. The Owner-President reviews all work for accuracy and compliance.

The acting director requested further information regarding the nature of the proffered position. In response, the petitioner provided the following job description:

1. Prepare budget and accounts receivable reports;
2. Oversee management of private investments;
3. Research 15-20 new properties per year in order to offer recommendation to purchase 1-3 new investments;
4. Act as a liaison between on-site property managers and [the petitioner];
5. Audit on-site property managers;
6. Coordinate and organized [sic] all correspondence regarding [the petitioner's] private investments;
7. Review all paperwork relating to [the petitioner's] private investments using general accounting procedures.

The acting director denied the petition on February 7, 2002, finding the evidence insufficient to classify the proffered position as a specialty occupation.

On appeal, counsel asserts that, given the job's responsibilities and the value of the petitioner's assets, it is reasonable to require a bachelor's degree for performance of the proposed duties.

The criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position has not been established. Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The proposed duties appear to resemble those of an administrative support manager, as described in the *Handbook* 2002-2003 edition at page 417. An administrative support manager ensures that personnel, equipment, finances, and record-keeping, among other tasks, are all in order. Administrative support managers coordinate work assignments, resolve staff and equipment problems, and handle a variety of responsibilities to assist in the effective operation of the business. According to the *Handbook*, most managerial positions are filled by promoting workers from within. The *Handbook* does not indicate that a bachelor's degree in any specific specialty is a requirement for

entry into this field. There is no other documentation on the record, either, that would indicate that a bachelor's degree is a minimum entry requirement for the proffered position.

The proffered position may also include responsibilities for bookkeeping. According to the *Handbook* at page 387, the usual requirement for a bookkeeping or accounting clerk is a high school diploma or its equivalent. A higher level of training is favored but not required, and such training is available in community colleges or schools of business. Inasmuch as the *Handbook* indicates that a high school diploma is sufficient for most bookkeeping and financial clerk positions, the petitioner has not shown that a bachelor's degree or its equivalent is required for this component of the position being offered to the beneficiary.

The petitioner submitted no documentation to establish that the degree requirement is common to the industry in parallel positions among similar organizations, as required by 8 C.F.R. § 214.1(h)(4)(iii)(A)(2), nor has the petitioner shown that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

There is no information that the petitioner has hired individuals in the proffered position previously. Thus the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that the employer normally requires a degree or its equivalent for the position.

The petitioner has not established 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, as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. 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 these proceedings 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 dismissed. The petition is denied.