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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, D.C. 20536

[REDACTED]

File: LIN-03-043-53706 Office: NEBRASKA SERVICE CENTER Date: DEC 30 2003

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]

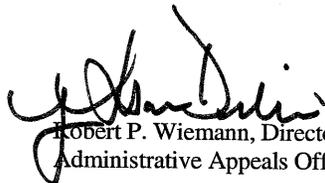
**INSTRUCTIONS:**

This is the decision 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 nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a real estate appraiser and consultant business with 21 employees and a gross annual income of \$963,000. It seeks to employ the beneficiary as a commercial real estate appraiser 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.

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, in part, for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the proposed duties, which include cash flow analysis and financial analysis, are so complex that a baccalaureate degree in business, or an equivalent thereof, is required. Counsel submits opinions from persons with expertise in the real estate industry in support of his claim.

Counsel's statement on appeal is not persuasive. The AAO does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning

entity's business operations are factors that the AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Cash flow analysis, including reading and interpreting complex financial statements, converting generally accepted accounting principal income to cash-flow equivalency, and forecasting cash flows into the future;
2. Financial analysis, including determining discounted present value, internal rates of return and net present value, partitioning cash flows to determine changes in value of commercial real estate on the occurrence of changes in cash flows, determination of discount rates, and utilization of alternative valuation schemes, such as the capital asset pricing model, the arbitrage pricing technique, options models, and basic utility theory;
3. Statistical modeling;
4. Market analysis, utilizing economic geography, marketing research, market area determination, and mathematical models for determining supply and demand with respect to the commercial real estate;
5. Macro-economic analysis with respect to the impact of interest rates, banking and finance laws and regulations, the supply of money, lending criteria, debt and equity returns, and the fundamental economic models which underlie value;
6. Macro-economic analysis, including application of price sensitivity (the elasticity of supply and demand), break-even point determination, pricing models, cost models, and the underlying economic principles; and
7. Preparing appraisal reports, setting forth the complex analysis and conclusions with respect to subject commercial real estate valuation.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in real estate or a related field. The proffered position is that of a commercial real estate appraiser. In his November 21, 2002 letter, the petitioner's president indicates, in part, that the beneficiary will work with a licensed or certified appraiser until he qualifies for licensing under Washington law. At the State of Washington Department of Licensing website, <http://www.dol.wa.gov/app/applicen.htm>, the following qualifications are listed for a state-licensed real estate appraiser:

1. Successfully complete a total of 180 classroom hours of approved real estate appraisal courses, which includes a 30 classroom hour course in the basic principles of real estate appraising and a 15 classroom hour course in the Uniform Standards of Professional Appraisal Practice (USPAP). The balance of classroom hours over those required for basic principles of real estate appraising and USPAP must be spent in approved appraisal courses of at least 15 classroom hours in length that include an examination.
2. Possess 3000 hours of appraisal experience obtained continuously over a period of no less than 30

months. At least 1500 hours must be in non-residential appraising. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

The qualifications described by the State of Washington Department of Licensing do not specify the requirement of a baccalaureate or higher degree in a specific specialty for employment as a commercial real estate appraiser. Furthermore, there is no evidence in the record that demonstrates that these requirements are the equivalent of a baccalaureate degree. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as real estate, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The record contains two opinions from individuals employed in the Washington State real estate industry who state, in part, that positions similar to the proffered position require a minimum of a bachelor's degree in the area of real estate or a related field. Neither writer, however, has provided evidence in support of his assertions. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors 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.