

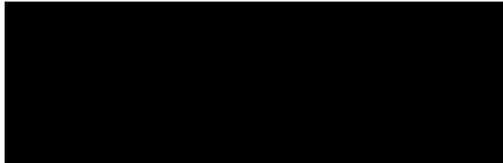
**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**DA**

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

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, N.W.  
BCIS, AAO, 20 MASS, 3/F  
Washington, DC 20536



**JUN 03 2003**

File: SRC 01 131 61101 Office: TEXAS SERVICE CENTER Date:

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:



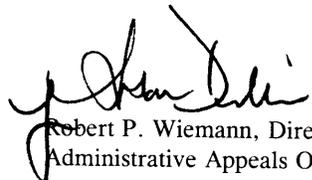
INSTRUCTIONS:

This is the decision 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 the Bureau of Citizenship and Immigration Services (Bureau) 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, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida real estate investment company with five employees and an undisclosed gross annual income. It seeks to temporarily employ the beneficiary as a general manager for a period of three years.

The director determined that the petitioner had not established that the proffered position was a specialty occupation and that the petitioner had not submitted a certified Labor Condition Application (LCA) for the petition.

On appeal, counsel resubmits a letter initially submitted with a request for evidence and submits an LCA certified on May 29, 2001.

The first issue in this proceeding is whether the petitioner obtained a certification from the Department of Labor that it had filed a labor condition application prior to filing the instant petition.

Pursuant to 8 C.F.R. § 214.2 (h)(4)(i)(B)(1):

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

In his request for evidence, the director requested a certified LCA from the petitioner. However, it appears from the contents of the record of proceeding, that the petitioner only presented the certified LCA in the appeal process. This submission does not appear to conform with the regulatory requirements, or current Bureau policy. Accordingly, the petitioner did not establish that the beneficiary is eligible for classification as an alien employed in a specialty occupation.

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

Section 214(i)(1) of the Immigration and Naturalization Act (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 field 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 received by the Texas Service Center on March 21, 2001, the petitioner described the job as "general manager" and outlined the following duties:

Formulate the policies and direct the operations, retains overall accountability, delegated the authority to oversee the executives who direct the activities of various departments, oversee managers of marketing, sales promotion, purchasing, finance, personnel training and administrative services.

The petitioner also submitted documentation with regard to the beneficiary's educational credentials in topography from the National Learning Service in Colombia, along with an educational evaluation of his foreign coursework from First L.E.E.G.A.L. Institute of Florida, Miami, Florida. This document stated that the beneficiary's education in Colombia is equivalent to a

bachelor's degree in topography from an accredited college in the United States.

On May 21, 2001, the director requested more information to justify why the position of general manager would require a baccalaureate degree, and in what particular field of study the baccalaureate degree would be required. In addition the director asked for an explanation of how a bachelor's degree in topography would help the beneficiary to work as a general manager.

In response, counsel submitted more information on the beneficiary's work and managerial experience in construction in Colombia and stated that the beneficiary's qualifications for the proffered position could be based on experience alone. Counsel also submitted an educational evaluation report that stated the combination of the beneficiary's education and work was equivalent to a bachelor's degree in topography from a regionally accredited university in the United States.

On December 6, 2001, the director denied the petition. As previously noted in these proceedings, the director stated that the Bureau had not received a certified LCA. In addition, the director stated that the evidence did not establish that the job of general manager required a baccalaureate degree, and it also did not establish that a degree in topography was required to perform the duties of the position. On appeal, counsel resubmits his letter sent in response to the director's request for evidence and submits an LCA for the proffered position dated May 29, 2001.

Pursuant to the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), namely that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a general manager position, the Department of Labor's *Occupational Outlook Handbook*, (*Handbook*) 2002-2003 edition, examines the position and educational requirements for general managers. This type of job is examined on page 87 within the classification of top executives, and states the following:

General and operations manager plan, direct, or coordinate the operations of companies or public and private sector organizations. The duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services.

. . . .

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's

or higher degree in business administration or liberal arts.

Accordingly the *Handbook* indicates that managers may have a variety of educational and work backgrounds and that there is no requirement for managers to have a baccalaureate degree in a specific specialty. In addition, the critical element in the analysis of this criterion is not the 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 bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> (Emphasis added.) To the extent that no requirement for a baccalaureate degree in a specific specialty has been established for the record, the petitioner has not established this criterion.

With regard to the second and third criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely that the degree requirement is common to the management industry in parallel positions in real estate investment firms, and that the employer normally requires a degree or its equivalent in a specific specialty for the manager position, the petitioner has submitted no evidence to establish either criterion. For example, the petitioner did not provide any job postings for managers of real estate firms of similar size and scope or any documentation with regard to the educational credentials of its previous or present managers.

With regard to the final criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely 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 minimal description provided by the petitioner of the beneficiary's work duties does not establish that the duties of the proffered position are any more specialized or complex than the duties of any other management position. For example, the record is devoid of any information with regard to the volume or nature of the petitioner's real estate business that could be used to establish the specialized nature of the proffered position. Without more persuasive evidence, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding.

---

<sup>1</sup> 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 *Defensor v. Meissner* 201 F.3d 388 (5<sup>th</sup> Cir. 2000).

Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the record does not contain an evaluation of the beneficiary's educational background in combination with his employment experience, from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The petitioner submitted an educational equivalency document that evaluated both the beneficiary's three year program of studies in topography at a Colombian technical training center and his five years of work experience in Colombia. This document then stated that the beneficiary had the equivalent of a U.S. bachelor's degree in topography.

There is no indication on the record that the FIRST L.E.E.G.A.L. Institute of Florida or its evaluators have the authority to grant college level credit for the beneficiary's work experience. It should be noted that one document submitted by the petitioner with regard to the beneficiary's educational equivalency document appears to be signed by [REDACTED]. In documents on the record, Mr. [REDACTED] is listed as both a consultant to the educational evaluation company as well as an officer of the petitioning corporation. In addition, both Mr. [REDACTED] consultant for the educational equivalency document, and Mr. [REDACTED] the evaluator identified on the document that examined both the beneficiary's education and work experience, appear to have identical academic and professional credentials.

The Bureau may, in its discretion, accept letters and advisory opinion statements as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Bureau is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988) The educational equivalency documents provided by the petitioner are given no weight in this proceeding. As this appeal will be dismissed on the grounds discussed, these issues need not be examined further.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.