

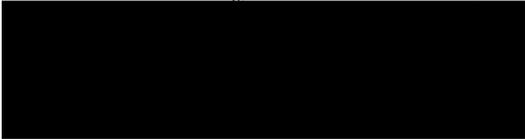


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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invasion of personal privacy**

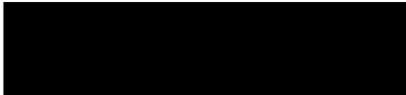
ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: EAC-02-055-53807 Office: Vermont Service Center

Date: MAR 13 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)

**PUBLIC COPY**

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a business development conglomerate/holding company that engages in such business activities as commercial and residential real estate development, hotel acquisition and development, factory and warehouse acquisition and development, as well as import and product distribution. It has approximately 40 employees and a gross annual income of \$5.5 million. It seeks to employ the beneficiary as a real estate and property manager 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined 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.

The director denied the petition because the petitioner had not demonstrated that the proffered position requires a baccalaureate degree in a specific specialty. On appeal, counsel states, in part, that the petitioner provided three separate references to independent sources that document the proffered position as a specialty occupation requiring a baccalaureate degree.

Counsel's statement on appeal is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The position of real estate and property manager] will include such matters as issues concerning leasing; insurance coverage; real estate and related tax matters; real estate title and lien matters; market analysis;

appraisal, valuation and evaluation, cost; overhead and depreciation analysis; mortgage; interest payment and other related financial matters; operating and cost overhead analysis; related financial matters and the preparation of reports and documents for this company's management concerning these real estate holdings....

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 Bureau does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in business administration with a concentration in real estate management or a related field. The proffered position appears to be that of a property and real estate manager. A review of the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, at page 78, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a property and real estate manager. Although 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 liberal arts also may qualify. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher

degrees in a specific specialty such as business administration with a concentration in real estate management, 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. 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.

Counsel submitted information from the publication, *America's Top Jobs for College Graduates, 2001*, relating to property, real estate, and community association managers. On page 209 of such publication, the training for such managers is described as follows:

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 may also qualify. (Emphasis added.)

Counsel also cites the website for *Institute of Real Estate Management* (<http://www.irem.org>) in support of his claim that the proffered position is a specialty occupation. Page 6 of such website, in the section entitled *Careers in Real Estate Management*, reads as follows:

While college education is not a requirement for beginning a career in real estate management, course work, particularly in business, can be extremely beneficial and can be used to satisfy the experience and knowledge requirements to qualify for the CERTIFIED PROPERTY MANAGER\* (CPM\*) designation. (Emphasis added.)

In view of the foregoing, the petitioner has not shown that a bachelor's degree in a specific specialty is required for the position being offered to the beneficiary.

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. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.