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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 028 51928 Office: NEBRASKA SERVICE CENTER Date: DEC 07 2004

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:

SELF-REPRESENTED

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. 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 an insurance and investment services company that seeks to employ the beneficiary as a general manager. The petitioner, therefore, 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 it is not a specialty occupation. On appeal, the petitioner explains the need for the beneficiary's skills and submits further documentation.

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.

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.

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) Form I-129 and supporting documentation; (2) the petitioner's letter of support; (3) the director's request for additional evidence, dated November 18, 2003; (4) the petitioner's letter that responded to the director's request, dated November 19, 2003; (5) the director's

denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a general manager. The petitioner described itself as an insurance and investment services company. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and the petitioner's letter in response to the director's request for further evidence. The petitioner stated that to effectively serve its clients and grow as a business, it needed to create, develop, and implement a company business plan, as well as establish systems and procedures that would allow each member of the petitioner's company to efficiently perform their duties. To this end, the beneficiary would oversee various aspects of the petitioner's business. The beneficiary would consult with the management team on establishing and updating business and marketing plans; manage business operations and the underwriting departments; and also supervise and coordinate activities of personnel (including training supervision and evaluation), among other duties. The beneficiary would also use her Spanish language skills as the petitioner provided group benefits programs to companies with Spanish-speaking employees. In its response to the director's request for further evidence, the petitioner stated that 75 per cent of the beneficiary's time would be spent in operations/managerial duties; 10 per cent would be spent in the supervision and training of new personnel, and 15 per cent of her time would be spent in the area of customer service. The petitioner stated that it highly preferred that the candidate for the position have a bachelor's degree in business, finance or economics, along with ten years of experience in different areas of an organization.

The director denied the petition and stated that the main purpose for the beneficiary's employment was for her translation skills, and the job duties of a translator did not require a baccalaureate degree. The director stated that the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* did not have a classification for a general manager for an investment and insurance service business; however, managers in general were not required to have a bachelor's degree in a specific specialty to perform their work duties. The director also stated that the job advertisements submitted by the petitioner did not establish an industry standard for the educational requirements of the proffered position. Finally, the director determined that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner describes the history of the new company and its evolution from a company providing mortgage finance services to a company providing financial and investment services. The petitioner also explains the need for the beneficiary's services. The petitioner also states that the beneficiary had not received proper legal representation in a previous Form I-129 petition. The petitioner submits a letter from the Honorable Jennifer Dunn, Representative, U.S. House of Representatives, a letter from the beneficiary, eight job descriptions for officer managers in a range of financial services companies, and a one-page document that lists Internet information on the number of job advertisements for office managers and/or office managers for finance or accounting companies.

Upon review of the record, the petitioner has established none of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree

requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Based on the duties described by the petitioner, the proffered position appears to be a general manager for an insurance and investment services company. The position involves operations management, staff supervision, and customer service. While the duties involve financial services, the position appears to be distinct from the *Handbook* classification of financial manager, described on page 39 of the 2004-2005 edition, which primarily concerns handling the financial reports, investment activities, and cash management strategies for firms, government agencies, and other organizations. Jobs in this classification include, among others, controllers, and branch managers of financial institutions. Entry into such positions requires a bachelor's degree in finance, accounting or a related field. The position appears to be more similar to that of administrative services manager described in the *Handbook*.

As correctly stated by the director, the *Handbook* does not have a specific classification for the proffered position. Nevertheless, with regard to the general operations aspect of the proffered position, the *Handbook* classification of administrative services managers suggests that the educational requirements for such positions vary widely, depending on the size and complexity of the organization. As previously stated, 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. Thus, the *Handbook* does not establish that a baccalaureate degree in a specific specialty is required for entry into the position.

With regard to parallel positions in similar businesses, the petitioner provided eight job vacancy announcements in its response to the director's request for further evidence. The companies identified in these vacancy announcements, which include H & R Block, and Deloitte and Touche, both national tax or accounting firms, are not firms that are similar to the petitioner. On appeal, the petitioner provided information taken from the Internet on ten positions listed as office managers within financial institutions. While the companies identified in this information appear to be similar to the petitioner in business focus, the educational credentials of the various office managers are either not identified or demonstrate a range of baccalaureate degrees. Neither the job vacancy announcements nor the descriptions of officer manager positions establish that parallel positions in similar firms require a baccalaureate degree in a specific specialty. The petitioner did not provide documentation from professional associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner stated in its petition that it was a new company and had previously employed the beneficiary as an intern. The petitioner provided no further documentation on the academic credentials of any other employees with similar job responsibilities. Therefore the petitioner has not met this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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. To the extent that they are depicted in the record, the duties of the position appear routine to the operation of any new business in the financial or insurance services field. Although the petitioner described the beneficiary's work responsibilities as vital to returning its business to profitability, this factor, in itself, does not establish the specialization or complex nature of the duties of the position. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

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.