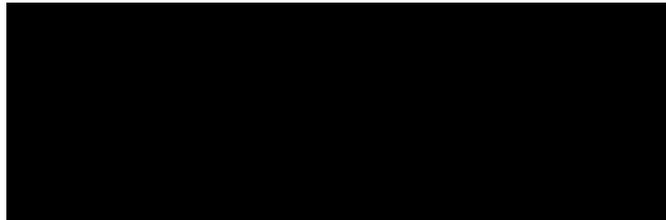


D2

U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: LIN 02 279 51920 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

FEB 24 2004

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:

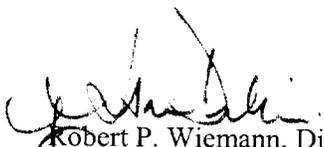


**PUBLIC COPY**

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

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 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 analysis firm that seeks to employ the beneficiary as an assistant manager. The petitioner 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief and other documentation.

Section 214(i)(1) of the Immigration and Nationality 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.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) 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 an assistant manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 5, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail supervising real estate appraisers and handling other personnel issues, as well as developing marketing plans. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in management.

The director found that the proffered position was not a specialty occupation because the job does not require a bachelor's degree in a specific specialty. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that baccalaureate degrees in a variety of fields from liberal arts to business would be acceptable for this field. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is so specialized and complex that it requires a bachelor's degree in management. On appeal, counsel submits a letter from the president of the greater Oregon chapter of the Appraisal Institute, a letter from the former commercial appraisal manager for Wells Fargo Bank, a letter from another appraisal service, a draft of property appraiser qualifications requirements from the Appraiser Qualifications Board of the Appraisal Institute, and a newspaper advertisement for a real estate coordinator position. Upon review of the record, it is determined that the petitioner has established none of the four 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. According to the *Handbook*, the most significant source of training for real estate appraisers is postsecondary vocational education. In addition, the AAO notes that no evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty is required for managerial jobs in general.

Regarding parallel positions in the petitioner's industry, the petitioner submitted a newspaper job posting for a real estate coordinator position. This is but one position, and the record contains no evidence to show that the employer issuing this posting is similar to the petitioner, or that the advertised position is parallel to the instant position. Thus, the advertisement has little relevance.

The record includes several letters submitted to support the assertion that the industry standard requirement is a bachelor's degree in management. The letters, however, indicate that there is a preference for a bachelor's degree in management, not that this is a minimum requirement. In another document, the Appraiser

Qualifications Board of the Appraisal Institute notes a proposal to require a bachelor's degree in an unspecified field of study as a prerequisite for candidates for the Certified General Criteria. The AAO concludes that this documentation does not demonstrate an industry standard requirement. Also, the record contains no 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 record does not contain evidence to support 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. Regarding the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4), 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 evidence is unconvincing. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.