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**U.S. Citizenship
and Immigration
Services**

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FILE: LIN 03 044 54914 Office: NEBRASKA SERVICE CENTER Date **JUL 23 2004**

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 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.

Mari Johnson

for 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 investment and development company that seeks to employ the beneficiary as an overseas marketing 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and states that previously submitted documentation establishes that the position requires a bachelor's degree in a specific specialty. Counsel submits no 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, dated April 17, 2002; (3) the director's request for additional evidence, dated February 10, 2003; (4) counsel's letter that responded to the director's request; (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 an overseas marketing manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary's duties would involve assisting with the expansion effort of the petitioner in Australia as well as in Thailand. The beneficiary would be responsible for overseeing the planning, directing, and coordination of operations of the petitioner's real estate development projects in these countries. The petitioner stated that it required a candidate for the position to have a baccalaureate degree in business administration, finance, real estate, public administration, or its equivalent in education and experience. The petitioner also stated that experience in management was essential.

The director found that the proffered position was not a specialty occupation and referred to the classification of property, real estate, and community association managers in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Based on the *Handbook* information, the director determined that individuals with degrees in numerous areas could perform the duties of the position. Thus, the director stated that a baccalaureate degree in a specific specialty was not required for entry into the position. The director found further 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 states that the position is a specialty occupation and asks that the letters from two professors that were submitted in the petitioner's response to the director's request for further evidence be reviewed again. Counsel also states 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 bachelor's degree. Counsel submits no further documentation.

Upon review of the record, 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. With regard to the proffered position, the director correctly identified the analogous *Handbook* classification of property manager and its training requirements. As indicated by the director, this

classification does not require a baccalaureate degree in a specific specialty for entry into the position. Thus, based on the *Handbook* information, the petitioner did not establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In addition, the petitioner submitted letters from [REDACTED] instructor, Business Division, Bellevue Community College, and [REDACTED] lecturer in languages, Bellevue Community College. Both professors stated that the proffered position is a specialty occupation that required a bachelor's degree in business as a minimum requirement for entry into the position. [REDACTED] also commented that several universities do offer baccalaureate degrees in business administration with a concentration in real estate management. Neither letter is viewed as dispositive in the instant petition. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

With regard to parallel positions in real estate development companies, the petitioner submitted documentation on four baccalaureate programs in areas such as business administration with a concentration in real estate management. The petitioner also submitted seven job vacancy announcements from companies throughout the United States for property managers. The documentation with regard to baccalaureate degrees in business administration and real estate management is not persuasive, as the criterion to be established concerns actual positions in actual companies, rather than whether baccalaureate programs in real estate management exist. While the seven job vacancy announcements for property managers are relevant documentation for the instant petition, they are not dispositive of the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For example, six of the job vacancy announcements only require a baccalaureate degree for entry into the position with no specific baccalaureate degree identified. The remaining job vacancy announcement, for BDSI Group of Companies, identifies a range of baccalaureate degrees in business administration, real estate, finance or a related field. However, this range of baccalaureate degrees does not meet the statutory criteria of a baccalaureate degree in a specific specialty.

The petitioner also submitted letters from six companies with regard to the educational background of individuals hired by these companies for international sales import/export coordinator. An additional letter provides a list of 11 individuals who were hired as international sales and import/export coordinators for [REDACTED] a Seattle company. This documentation does not appear relevant to the present proceedings, as the proffered position is not that of a sales and import/export coordinator. The record is also not clear that the petitioner, in business focus, is similar to any of the companies whose letters were submitted to the record. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. Although counsel, on appeal, states that the proffered position has both complex and specialized duties, she provides no further documentation to substantiate this allegation. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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 submitted a list of four individuals that it stated it had

employed as overseas marketing managers or property managers. The academic credentials for these four individuals are identified as a baccalaureate degree in accounting, a baccalaureate degree in liberal arts, a master's of business administration degree in marketing, and a baccalaureate degree in international business. This documentation is not viewed as persuasive. First, the petitioner provided no further documentation, such as copies of diplomas and evidence of employment, to further substantiate the employment and academic credentials of the four persons. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Second, the information provided by the petitioner does not establish that a baccalaureate degree in a specific specialty is required for entry into the position, but rather that the petitioner hired individuals with a range of baccalaureate degrees for this position. 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. Therefore the petitioner has not met this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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 represent the various facets of identifying, buying, constructing, and leasing real estate properties. While the duties are numerous, they appear routine to the job of real estate property manager. With regard to the international aspect of the proffered position, the petitioner has provided no information with regard to current properties being managed in either Australia or Thailand, and the particular complexity of any such future business operations. 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.

Beyond the decision of the director, the petitioner did not establish that the beneficiary is qualified to perform the duties of the position, if it had been determined to be a specialty occupation. The petitioner submitted an educational equivalency document from the Foundation for International Services, Inc. (FIS) that stated the beneficiary had the equivalent of a bachelor's degree in industrial chemistry and a bachelor's degree in business administration from a U.S. accredited university based on his academic studies, and employment experiences. However, FIS is not qualified to prepare an evaluation of this sort as it does not: "[Have] 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 the regulation. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

FIS is qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." In the evaluation, FIS determined that the beneficiary's bachelor's degree from Australia is equivalent to a bachelor's degree in industrial chemistry from an accredited college or university in the United States. This part of the evaluation is accepted, but the AAO does not accept the assessment of the beneficiary's work experience and other training as FIS is not qualified to make that assessment. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *See Matter of SEA*,

Inc., 19 I&N Dec. 820 (Comm. 1988). Accordingly, the evaluation report prepared by FIS is given no weight in these proceedings.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS can evaluate whether the beneficiary has acquired the equivalent of a baccalaureate degree through a combination of education, specialized training, and/or work experience in areas related to the specialty and whether the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. Upon review of the beneficiary's work resume, it is noted that he has extensive experience in management positions with Thai Airways. This description of his work experience would carry more weight in the present proceedings if his employers at Thai Airways had provided a detailed description of his work experience and whether or not it reflected a series of progressively more responsible positions. In addition, there is not evidence in the record that establishes any work experience on the part of the beneficiary in the field of real estate management, or work experience relevant to the field of real estate management. Without more persuasive evidence, the petitioner has not met the criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For this additional reason, the petition may not be approved.

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.