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U.S. Citizenship
and Immigration
Services

D2

FILE: EAC 02 145 50328 Office: VERMONT SERVICE CENTER

Date: JUN 02 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:

[REDACTED]

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 an individual who has substantial holdings in bonds, stocks, real estate, and other investment properties, including a 6,000 square foot prime residential property in Washington, D.C. He seeks to employ the beneficiary as a property management specialist for his residential property in Washington, D.C. 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.

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 a property management specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's March 22, 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: managing the affairs of the household, including planning and keeping records of weekly and monthly budgets; coordinating and supervising the activities of subcontractors performing jobs on the property; managing the flow of incoming and outgoing mail; arranging for maintenance and upkeep of property; directing bookkeeping functions; arranging for periodic inspection, maintenance, and upkeep of household utilities; and submitting periodic reports to the property owner regarding the status of estate management activities. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, accounting, finance, economics, real estate, or a related field of study.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate degree. 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, counsel states, in part, that the record contains job postings, advertisements, and professional opinions to demonstrate that the proffered position requires a baccalaureate degree. Counsel also states that this degree requirement is common industry wide. Counsel further states that the proffered position is similar to property management specialist or a property manager, positions to which the Department of Labor (DOL) assigns an SVP Code of 8 in its *Dictionary of Occupational Titles (DOT)*, which, according to counsel, indicates that these positions are professional occupations. Counsel additionally states that, in its *Occupational Outlook Handbook (Handbook)*, the DOL also finds that most employers prefer to hire college graduates for property management positions, with a preference for degrees in business administration, accounting, finance, real estate, public administration, or related fields. Finally, counsel indicates that the director improperly focused on the employer's size and past hiring practices.

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 DOL's *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. The AAO does not concur with counsel that the proffered position is that of a property manager, as described in the DOL's *Handbook*, 2004-2005 edition. The DOL finds that forty percent of property, real estate, and community association managers work for real estate agents and brokers, lessors of real estate, or property management firms, while others worked for real estate development companies, government agencies

that manage public buildings, and corporations with extensive holdings of commercial properties. The beneficiary's job duties do not entail the level of responsibility of the positions described in the *Handbook*. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a property management specialist position, as described in the instant petition.

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submits letters from various individuals/businesses indicating that an educational background in business, finance, real estate or property management, or a closely related field of study is common to the industry. The writers, however, did not submit any evidence in support of their assertions. Thus, the letters have little relevance. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, the text of two of the letters is identical. Thus, the AAO must question whether the opinions expressed in each letter are the views of each author.

The record also contains an opinion from [REDACTED] Assistant Professor of Business Administration, Mercy College, who states, in part, that the proffered position requires at least a bachelor's degree in business administration or a related field. Again, Professor Jelen did not submit any evidence in support of his assertions. *See Matter of Treasure Craft of California, id.*

The record also contains various Internet job postings for real estate specialist and property manager positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. None of the advertisers are private households. Thus, the advertisements have little relevance.

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. The petitioner, thus, has 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. On appeal, counsel indicates that this is the first time for the petitioner to hire a property management specialist for its Washington, D.C. residential property. The petitioner, thus, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 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.