U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 02 055 53807 Office: VERMONT SERVICE CENTER Date: SEP 01 2004

IN RE: Petitioner: [redacted]
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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The decisions of the AAO and the director are affirmed. The petition is denied.

The petitioner is a business development conglomerate/holding company that engages in commercial and residential real estate development, hotel acquisition and development, factory acquisition and development, as well as import and product distribution. It seeks to employ the beneficiary as a real estate and property 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 on the basis that the proffered position did not meet the definition of a specialty occupation. The AAO affirmed the director's findings.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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; (5) Form I-290B and supporting documentation; (6) the AAO's decision affirming the denial of the petition; and (7) the petitioner's motion to reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a real estate and property manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 25, 2001 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 concern: leasing; insurance coverage; real estate and related tax matters; real estate title and lien matters; market analysis; appraisal, valuation, evaluation, and cost; overhead and depreciation analysis; and the preparation of related reports. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration/real estate management.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On motion, counsel states, in part, that the proposed duties, which include overseeing nine commercial buildings, one warehouse, and one residential property, are so complex that a baccalaureate degree in commercial real estate administration, or an equivalent thereof, is required. Counsel further states that a more accurate job title for the proffered position is "commercial real estate administrator/analyst." Counsel submits the following documentation in support of his motion:

- Five newspaper job postings for real estate related jobs from the April 6, 2003 New York Times;
- Petitioner's year 2000 U.S. Corporation Income Tax Return; and
- Partial copy of lease agreement, dated April 1, 1997, between "An Armful Corp., a/n K & C Management Co., 31-85 Whitestone Expwy., Flushing, NY" and Kwon's Corp, 29-02 Union St., Flushing, NY, to use the premises at 29-02 Union St. for a supermarket.

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 Department of Labor's *Occupational Outlook Handbook* (*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 and real estate manager, as described in the *Handbook*, 2004-2005 edition. The record contains insufficient evidence that the proposed duties entail the level of responsibility of such occupation. Although counsel asserts that the beneficiary would be managing 11 properties with the combined value of hundreds of millions of dollars, he presents the lease agreement for only one property, which is a supermarket that has been leased by the petitioner

since 1997. It is noted here that counsel did not submit a complete copy of this lease; the signature page, for one, was omitted. The record contains no explanation for this omission. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, the petitioner's 2000 U.S. Corporation Income Tax Return indicates that the petitioner's business is the wholesale trade of groceries, and contains no evidence of the petitioner's alleged business activities that were described in the petitioner's November 25, 2001 letter: "commercial and residential real estate development, and factory and warehouse acquisition and development." It is additionally noted that, in another petition filed by the same petitioner and represented by the same counsel (EAC-04-032-54179), the petitioner's business is described only as "food importer and distributor," with no mention of any real estate business activities. In view of the foregoing, the record contains insufficient evidence to support counsel's claim that the petitioner requires the full time services of a real estate property manager. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Regarding parallel positions in the petitioner's industry, counsel submitted Internet job postings for real estate related 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. One of the positions is that of a senior project manager for Common Ground Community, which is a non-profit housing and community development organization with a mission to solve homelessness through innovative programs that transform people, buildings, and communities. Another position is that of an assistant REO manager for a commercial mortgage company. Another position is that of an asset management associate for a leading national real estate investment firm. The record contains no evidence to demonstrate that the proffered position is similar to these advertised positions. 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 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. As counsel does not address this issue on motion, it will not be discussed further.

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 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 decision of the AAO, dated March 13, 2003, is affirmed. The petition is denied.