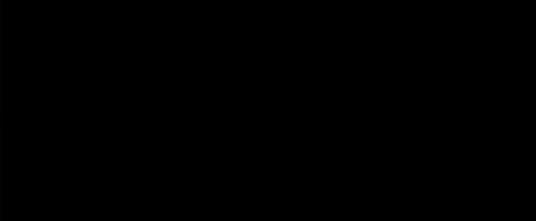




U.S. Citizenship
and Immigration
Services

02



FILE: SRC 03 090 50788 Office: TEXAS SERVICE CENTER Date: SEP 09 2004

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

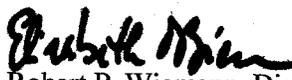
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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

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prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to her for further consideration.

The petitioner is a real estate asset management corporation that seeks to employ the beneficiary as a managing member. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 letter from the petitioner's president.

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 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 managing member. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 30, 2003 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: analyzing the international business environment; developing and maintaining relations with potential international investors; negotiating agreements with international corporations and investors; hiring, supervising, and terminating independent contractors and employees; managing the petitioner's budget and developing its tax strategy; ensuring compliance with local, state, and government agencies; and identifying, analyzing, and selecting investment opportunities. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in international business.

The director found that the proffered position was not a specialty occupation because the job is primarily that of a general manager or sales worker supervisor. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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's president states, in part, that the proffered position is a high-level financial management position that requires at least a bachelor's degree in a related specialty. He further states that the proposed duties, which include educating the international investment community about the petitioner's multi-million dollar investment opportunities, are so complex that a bachelor's degree in international business, or a related field, is required.

The proposed duties appear to be those of a financial manager. A review of the *Handbook*, 2004-2005 edition, finds that a bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers. In this case, the beneficiary holds a baccalaureate degree in international business conferred by a U.S. institution. Upon review of the proposed duties, the proffered position may be a specialty occupation within the meaning of regulations.

Although the proffered position may be a specialty occupation, the petition may not be approved because the director has not determined whether a specialty occupation exists for the beneficiary. It is noted that the petitioner has not submitted sufficient evidence of its multi-million dollar investment opportunities that the beneficiary is to manage. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence she deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to her for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.