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U.S. Citizenship
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FILE: LIN 03 259 50279 Office: NEBRASKA SERVICE CENTER Date: 7/10/04 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a real estate and management agency. It seeks to employ the beneficiary as a real estate manager and to classify her 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 grounds that the record failed to establish that the proffered position qualifies as a specialty occupation and that the beneficiary is qualified to perform services in a specialty occupation.

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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a real estate company, established in 1997, with three employees and gross annual income of approximately \$123,000. The petitioner proposes to hire the beneficiary for the position of real estate manager. The duties of the job were listed in a letter accompanying the petition as follows:

- Handle the financial operations of the property, ensuring that mortgages, taxes, insurance premiums, payroll, and maintenance bills are paid on time.
- Supervise the preparation of financial statements and periodically report to the owners on the status of the property.
- Negotiate contracts for janitorial, security, groundskeeping, trash removal, and other services.
- Monitor the performance of contractors and investigate and resolve complaints from residents and tenants.

The minimum requirement for the position, the petitioner states, is a bachelor's degree in business administration. The record includes a copy of the beneficiary's diploma in June 2000 from Mining College, Technical University Ostrava, in the Czech Republic, indicating that she earned a degree in public economy and administration based on her completion of a master's program in economic policy and administration. According to a credentials evaluation service in New York City the beneficiary's education in the Czech Republic is equivalent to a combined bachelor's and master's degree in business management and administration from an accredited college or university in the United States.

In response to the RFE the petitioner provided a broader list of the proffered position's duties:

- Supervise staff engaged in preparing lease agreements.
- Perform routine research on zoning ordinances and condemnation consideration.
- Inspect properties and land under consideration for acquisition.
- Recommend acquisition, disposition, improvement, or other action consistent with best interest of company.
- Evaluate and promote industrial-development potential of the properties.
- Negotiate contracts with sellers and renters of properties.
- Handle the financial operations of the property, ensuring that mortgages, taxes, insurance premiums, payroll, and maintenance bills are paid on time.
- Supervise the preparation of financial statements and periodically report to the owners on the status of the property.
- Negotiate contracts for janitorial, security, groundskeeping, trash removal, and other services.
- Monitor the performance of contractors and investigate and resolve complaints from residents and tenants.
- Manage apartment house complex and explain occupancy terms.

In accordance with the petitioner's description of the proffered position, the director determined that the position fits within the occupational category of property, real estate, and community association managers, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. Quoting an excerpt from the *Handbook* about the training and other qualifications for property management positions, which indicated that a variety of educational degrees are suitable for entry into the occupation, the director found that a baccalaureate degree in a specific field of study is not

required for entry into such positions. The director found that the petitioner failed to establish that such a degree requirement is common to the industry in analogous positions, that it had required a baccalaureate or higher degree in a specialized area for the proffered position in the past, or that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also found that the evidence of record failed to establish that the beneficiary is qualified to perform services in a specialty occupation, noting that the petitioner did not submit transcripts from the beneficiary's university in the Czech Republic and did not explain how her coursework correlates to the requirements of the proffered position.

On appeal counsel asserts that the director erred in determining that the real estate manager position does not qualify as a specialty occupation. According to counsel, the proffered position meets all four criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The beneficiary would be engaged in "sophisticated job duties relating to the conception, creation and planning phases of the process of serving the needs of our commercial and residential clients," counsel declares, for which a B.A. degree in business administration with coursework in such fields as economics, management, accounting, marketing, and other business-related areas is required. Counsel submits a copy of the beneficiary's transcript, as well as a series of internet job announcements for real estate manager positions which, according to counsel, demonstrates that a baccalaureate or higher degree in business administration and the specific knowledge acquired thereby is required for the proffered position, thereby establishing it as a specialty occupation as defined in section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

In accord with the director's decision, the AAO determines that the proffered position is that of a property or real estate manager, as described in the DOL *Handbook*, 2004-05 edition, at 58:

. . . . *Property and real estate managers* oversee the performance of income-producing commercial or residential properties, and ensure that real estate investments achieve their expected revenues

Generally, property and real estate managers handle the financial operations of the property, ensuring that rent is collected and that mortgages, taxes, insurance premiums, payroll, and maintenance bills are paid on time

Often, property managers negotiate contracts for janitorial, security, groundskeeping, trash removal, and other services. When contracts are awarded competitively, managers solicit bids from several contractors and recommend to the owners which bid to accept. They monitor the performance of contractors and investigate and resolve complaints from residents and tenants when services are not properly provided. Managers also purchase supplies and equipment for the property and make arrangements with specialists for repairs that cannot be handled by regular property maintenance staff.

As for the educational requirements of real estate managers, the *Handbook* states as follows:

Most employers prefer to hire college graduates for property management positions. Entrants with degrees in business administration, accounting, finance, real estate, public administration, or related fields are preferred, but those with degrees in the liberal arts also may qualify

Although many people entering jobs such as assistant property manager do so by having previously gained onsite management experience, employers increasingly hire inexperienced college graduates with bachelor's or master's degrees in business administration, accounting, finance, or real estate for these positions.

Handbook, id., at 59. Though the above quoted language indicates that a degree in such specialty areas as accounting, finance, and real estate is increasingly favored by employers looking for real estate managers, it also states that a liberal arts degree may suffice in many cases. Furthermore, while it may be increasingly unusual, the *Handbook* indicates that an individual without any baccalaureate degree may also be considered for some positions if he or she has on-the-job management experience. Based on the foregoing information, the AAO determines that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a real estate manager position, as required for the proffered position to meet the first alternative criterion to qualify as a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Counsel has resubmitted on appeal an advisory opinion report from a evaluation service which cites another DOL resource on occupations – the *Dictionary of Occupational Titles (DOT)* – in support of its assertion that real estate managers require a baccalaureate or higher degree in a business-related specialty. The *DOT*, however, is not a persuasive source of information about whether a particular job requires a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The *DOT* gives occupations an SVP (“specific vocational preparation”) rating based on the total number of years of vocational preparation required for a particular position. The SVP rating does not specify how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a particular position would require. Thus, the *DOT* does not establish that a baccalaureate or higher degree in a specific specialty is required for entry into a real estate manager position.

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record does not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. On appeal counsel has submitted seven internet job announcements for real estate manager positions, all of which state that a

bachelor's degree in business, finance, real estate, or a related field is required for the position. There is no indication in the announcements that any of the advertising companies is similar in size and scale of operations to the petitioner. Most, if not all, of the companies appear to be considerably larger than the petitioner, which has three employees and gross annual income of \$123,000. One company indicates that it has 150,000 customer accounts in the United States and abroad; another company states that it operates 2,000 convenience stores in the United States and abroad; another company is one of the nation's leading banks with 1,100 locations nationwide; another company is an orthopedic group located in 42 states. The AAO determines that the internet job announcements do not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the real estate manager position is so complex or unique that it can only be performed by an individual with a specialty degree directly related to the position. Accordingly, the proffered position also fails to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. While some real estate manager positions may involve levels of specialization and complexity that require a baccalaureate or higher level knowledge in a closely related specialty, the petitioner has not demonstrated that the duties of the proffered position require that level of knowledge. The AAO is not persuaded by the evidence of record that the duties of the position could not be performed by an individual without baccalaureate or higher level knowledge in a specific specialty.

For the reasons discussed above, the proffered position does not meet any of the criteria in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

As previously discussed, the director determined that the beneficiary was not qualified to perform the services of a specialty occupation. Since the beneficiary's credentials are relevant only if the proffered position is found to be a specialty occupation, which is not the case here, the AAO need not further address this issue.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.