



U.S. Citizenship
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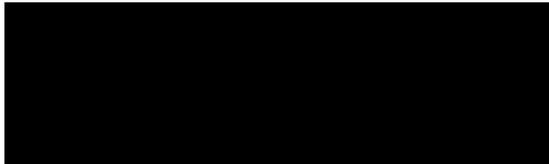
FILE: LIN 03 043 53706 Office: NEBRASKA SERVICE CENTER

Date: AUG 28 2007

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:



PHOTOCOPY

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, Chief
Administrative Appeals Office

DISCUSSION: On November 25, 2002, the petitioner filed Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to employ the beneficiary as a commercial real estate appraiser 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, Nebraska Service Center, denied the nonimmigrant visa petition and the petitioner appealed that decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on December 30, 2003.

Subsequently, the petitioner filed a complaint for declaratory judgment in the U.S. District Court for the Western District of Washington that was decided against the plaintiff and appealed to the United States Court of Appeals for the Ninth Circuit. *David Parsons & Associates, Inc. v. Tom Ridge, et al.*, NO. 05-35279; DC NO. CV-04-00212-JCC. The Ninth Circuit Court found that the agency had abused its discretion by failing to articulate specific and legitimate reasons for denying relief under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The Ninth Circuit Court directed that the district court remand the matter to the AAO so that the AAO could adequately articulate its reasons for denying the petition, and if appropriate, serve the plaintiff with a request for evidence (RFE) that detailed the additional evidence needed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The AAO issued a notice and request for evidence. On June 18, 2007, counsel for the petitioner provided a response to the AAO's RFE. Upon review of the petitioner's June 18, 2007 letter attached to the response, the appeal will be sustained. The petition will be approved.

The petitioner is a real estate appraiser and consulting business with a gross annual income of \$963,000 when the petition was filed. It seeks to employ beneficiary as a commercial real estate appraiser. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 finding: that the Department of Labor's *Occupational Outlook Handbook (Handbook)* did not report that a baccalaureate or higher degree was required for the occupation of an appraiser or assessor of real estate; that the petitioner had not shown that it had required the services of individuals with baccalaureate or higher degrees in a specialized area for the proffered position; that the petitioner had not provided documentation that businesses similar to the petitioning company required the services of individuals with baccalaureate degrees in parallel positions; and that the opinions of two individuals submitted as experts were not supported with documentation or other evidence.

As referenced above, the AAO dismissed the petitioner's subsequently filed appeal and, after an appeal of the district court's denial, the Ninth Circuit directed that the district court remand the matter to articulate specific and legitimate reasons for denying relief pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon reopening the matter, the AAO reiterated that the information that had been provided regarding the proffered position did not establish the proffered position as a specialty occupation. The AAO observed that the petitioner's initial description closely tracked the duties described in [REDACTED] August 9, 2002 opinion letter, but that neither [REDACTED] the petitioner offered an analysis of the generally described duties as the duties related specifically to the petitioner's business. The AAO noted that the record did not identify the specialized or complex duties associated with the proffered position and requested an explanation of the tasks

that the petitioner considered more complex and specialized than those usually performed by commercial real estate appraisers, an occupation that does not require a bachelor's degree or higher to perform.

To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The AAO adopts its previous decision as it relates to the first three criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not provided further evidence nor does the record contain evidence to establish the proffered position as a specialty occupation under any of these criteria.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), whether the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the petitioner's June 18, 2007 explanation of how the proffered position's tasks are more complex and specialized than those usually performed by commercial appraisers, the petitioner indicates that "[i]t is one thing to be able to appraise the basic commercial asset, which requires a basic understanding of appraisal practice and education;" "[h]owever, to be able to value the more complex properties, significant amounts of specialized education are required, as outlined by the tasks and duties set forth in the job description in this case." The petitioner then references the beneficiary's experience in appraising multi-million dollar real property assets including multi-tenant shopping centers, multi-storied office buildings, and high-tech special purpose properties. The above information does not establish how the proffered position differs from that of other commercial real estate appraisers, an occupation that does not require a bachelor's degree in a specific field of study. The AAO notes the petitioner's conclusion that more complex properties require specialized education and that the beneficiary has more specialized education, but the beneficiary's experience and qualifications do not make a position a specialty occupation. The occupation must be established to be a specialty occupation on the basis of the actual duties of the proffered position and how those duties relate to the petitioner's established business.

The petitioner also provided six letters from individuals in the real estate business or real estate appraisal business to demonstrate that the nature of the position offered is so specialized and complex that it is necessary for the incumbent to have a bachelor's or higher degree in real estate or the equivalent. A review of the six letters reveals that each author repeats the initial description of the proffered position and concludes without analysis that the duties comprise the duties of a position that is complex and specialized. The authors do not address the particular needs of the petitioner nor offer an analysis of the university-level coursework that would be necessary to perform the duties described. The AAO acknowledges the authors' business preferences and their conclusions that those in the industry prefer to hire individuals with a bachelor's degree in real estate but observes that the authors do not provide substantiating evidence, such as the diplomas and education of individuals they hired or objective surveys, trade data, or other information to support their conclusions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, employer preference is not synonymous with the normally required language of the regulation nor does employer preference assist in distinguishing the proffered position from other commercial appraisers, an occupation that does not require a baccalaureate or higher degree.

The petitioner also noted that as of January 1, 2008, the formal criteria of The Appraisal Foundation, a foundation authorized by Congress as the source of appraisal standards and appraisal qualifications, will change to require a certified general appraiser to have a bachelor's degree or higher, as well as to meet certain

experience requirements, and 300 hours of appraisal education through classroom instruction. The AAO notes, however, that a petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Further, while a bachelor's degree requirement plus 300 hours of appraisal classes may indicate that a degree in a specialty will be preferred when the new guidelines take effect, The Appraisal Foundation indicates in lieu of the required degree, 30 semester credit hours covering specific college-level courses will be sufficient along with the 300 hours of appraisal classes. Thus, the documentation submitted from The Appraisal Foundation serves to substantiate that a college degree in a specific discipline is not required to perform the duties of the proffered position, and will not be required as of January 1, 2008.

In addition to the information noted above, the petitioner's June 18, 2007 response includes each of the initially described duties of the proffered position as well as additional comments in an effort to demonstrate the complexity of the proposed duties. For example, the petitioner provides: detail regarding the market research that must be performed; detail of the analysis of the results of the research; and how the results of the market research must be reconciled against the property being appraised in terms of location, exposure, market growth/forecasts, improvement quality, tenant stability, residual lease terms, and perceived risk. The petitioner notes that the primary focus of a commercial appraiser is on the mastery and interpretation of the implications of the various derived market results and the subsequent valuation techniques available to give an opinion of value. Although the petitioner seems to focus primarily on the occupation of a commercial appraiser, rather than the nature of its commercial appraiser's tasks, the AAO finds sufficient information in the response to the RFE regarding the nature of the petitioner's specific position to conclude that the individual in the proffered position will be required to apply theory and specialized knowledge in the performance of those tasks.

It is the detailed information relating the duties of the proffered position to the petitioner's specific business and the explanations and descriptions that are specific to the petitioner's business that enables CIS to make an informed decision regarding the nature of a proffered position. In this matter, it is the combination of the market research tasks and financial analysis described by the petitioner; the nature of the commercial aspect of the petitioner's operations, including the extensive property and financial analysis requirements of the petitioner's commercial clientele; and the evolving industry standards that establish that the nature of the petitioner's 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. The petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record reflects that the beneficiary will be performing the duties of a specialty occupation and has completed a four-year full-time program at Massey University in New Zealand, earning a degree of Bachelor of Business Studies that has been evaluated to be equivalent in level and purpose to a Bachelor of Business Studies with a major in Real Estate including specialization in property valuation. Evidence of record indicates that the beneficiary will be working under the supervision of a licensed appraiser, which is allowed under the law. Thus, the beneficiary is qualified to perform the services of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The director's December 23, 2004 decision and the AAO's July 14, 2006 decision are withdrawn and the petition is approved.