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U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC 03 097 53789 Office: CALIFORNIA SERVICE CENTER Date: APR 27 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(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 a company engaged in commercial/residential property management and development. In order to employ the beneficiary as a 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 two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal, counsel submits a brief and new as well as previously submitted documentary evidence.

In reaching its decision, the AAO considered the entire record of proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B as annotated by counsel, counsel's brief, and the documentary evidence submitted with the brief.

The director's decision to deny the petition was correct. The record does not present an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). As this determination is dispositive of the appeal, the AAO will not address the second basis of the denial.

Section 214(i)(l) of the Immigration and Nationality Act (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. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). The Form I-129 describes the proposed duties as follows:

> Manage and supervise commercial and residential rentals, repair, and remodeling duties. Will help oversee two office workers and approximately eight workers in various trades.

The petitioner later expounded on the position's responsibilities in the areas of electrical infrastructure; fire prevention and response; HVAC (heating, ventilation, and air conditioning) inspections; oversight of safety, maintenance, and electrical infrastructure duties related to the petitioner's restaurant/kitchen properties and a conversion from a night club to a restaurant; federal, state, and municipal code compliance; and miscellaneous activities, such as tenant meetings, record maintenance, insurance, risk management, conferences with local government and other businesses, and staff management.

The evidence of record on the proposed duties, however, does not demonstrate a position that met any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO paid particular attention to the petitioner's contention that its property manager must have specialized knowledge peculiar to mechanical or electro-mechanical engineering. The petitioner's letter of reply to the RFE contained this representative statement:

> In the interest of consumer and employee safety, the growing size and complexity of our electrical and mechanical installations at our properties, particularly the commercial properties, mandate that someone who has at a minimum a baccalaureate-level education oversee them. The technical knowledge necessary to perform the required calculations in mechanical and electrical areas is an important element of this position. This is particularly so given the requirements of the position dictate not only maintaining the existing infrastructure, but also planning its expansion. Industry-wide, at this level of sophistication, services in the mechanical or electro-mechanical field of study are an absolute necessity. In the past, we have hired contractors and consultants to perform a lot of these responsibilities. We would like to hire [the beneficiary] as our Property Manager as he is capable of fulfilling these requirements.

The record provides no details about the "required calculations in mechanical and electrical areas," nor does the record contain any documentation from the industry to support the observation that "[I]ndustry-wide, at this level of sophistication, services in the mechanical or electro-mechanical field of study are an absolute necessity." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting

the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Upon consulting the *Handbook* with regard to the duties to which the record ascribes mechanical or electrical dimensions, the AAO found no indication that such duties would require a baccalaureate or higher degree, or the equivalent, in any specific specialty. In particular, the *Handbook* reports no such degree or degree-equivalent requirement for any of these occupations: heating, air conditioning, and refrigeration mechanics and installers; electrical and electronics installers and repairers; construction and building inspectors; maintenance and repair workers, generally; and electricians. As generally described in the record, the technical duties of the proffered position certainly do not exceed the scope of skills and knowledge required for the aforementioned occupations.

The next issue is the general property management duties outside the electrical/mechanical sphere. To the extent these duties are described in the record, they substantially comport with the general duties of property, real estate, and community association managers as addressed in the *Handbook*. The *Handbook*, however, indicates that employers hiring for these positions do not normally require a baccalaureate or higher degree, or the equivalent, in any specific specialty. According to the *Handbook*, there is only a preference for a college degree in business administration, accounting, finance, real estate, public administration, or related fields, but those with degrees in the liberal arts also may qualify.

The AAO fully considered but accorded no persuasive weight to the professors who opined on the specialty occupation issue. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The three-page opinion of Dr. Carrano of the Rochester Institute of Technology contains this one sentence that is relevant to the specialty occupation issue: "It is the industry standard for this type of position to require an individual with a minimum of a Bachelor's degree in Electrical Engineering Technology, Mechanical Engineering Technology, Electromechanical Engineering Technology or equivalent." This statement merits no evidentiary weight for each of several reasons.

The "detailed job description" included in Dr. Carrano's opinion, and upon which he apparently based his opinion, consists of just six bulleted statements that are only from one to three lines long. Only one of these statements is allotted to each of the six duties included in the description. This information is too general and abstract to support a credible assessment of the educational requirements of the actual position and specific duties in question. Furthermore, the information in the record about Dr. Carrano does not establish him as someone with special knowledge of the real estate management field. In fact, Dr. Carrano's specialty appears to be industrial and materials engineering, not property management or, for that matter, electrical engineering technology, mechanical engineering technology, or electromechanical engineering technology. Finally, Dr. Carrano's opinion is not in accord with the DOL information in the *Handbook*.

The short, one-page letter from Dr. Hammond of American Intercontinental University provided only one paragraph related to the specialty occupation issue:

> I have read the Job Description of a Property Manager written by [the petitioner] of March 1, 2003 [apparently the petitioner's March 1, 2003 letter responding to the RFE, which is in the record.] According to my professional opinion, this description professionally outlines the duties and responsibility of a Property/Development Manager position. In my professional opinion, in order to satisfy the requirements of this position the candidate should have at least a Bachelor of Science degree in Electrical Engineering or in a related field.

The AAO also discounted Dr. Hammond's opinion for several independent reasons.

Dr. Hammond provides no documentation to substantiate her assertion, "Due to my educational, research, and professional background, I have expertise in the analysis of modern business operations including the educational background requirements for various business positions including Property Manager." Experience or recognition of expertise in property management is not evident in any of the information in this professor's resume. Furthermore, Dr. Hammond's opinion does not accord with the DOL *Handbook* information on property management as an occupation for which there is, at most, a preference for a baccalaureate degree, and in majors other than electrical engineering. Also, Dr. Hammond does not elucidate the factual aspects of property management that support her conclusion.

The AAO also notes that the list of contractors, some of whose work the beneficiary would apparently shoulder to an unspecified extent, includes firms involved in refrigeration repair and replacement, coin-operated car wash equipment repair and replacement, electrical repairs, commercial refrigeration repairs, and plumbing. It is not evident that engineer credentials were a prerequisite for retaining the services of any of these firms.

For the reasons discussed above, the evidence of record does not meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) of a position that normally requires a baccalaureate or higher degree in a specific specialty, or the equivalent of such degree, as the minimum requirement for entry.

Next, the petitioner has not presented evidence that would qualify the proffered position under either prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*).

The evidence does not satisfy the first prong by establishing that a degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *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)).

As earlier discussed, the *Handbook* does not report that the proffered position requires a degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry. Furthermore, for the reasons presented earlier, the opinions of Dr. Carrano and Dr. Hammond have no persuasive value with regard to the educational requirements of the proffered position.

Also, the evidence of record does not qualify the proffered position under the second prong, which provides that "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." The evidence of record does not indicate that the proffered position would be more unique or complex than the property and real estate management occupations addressed in the *Handbook*, and the *Handbook* indicates that performance of those occupations do not require a bachelor's or higher degree in any specific specialty.

Next, 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 – is not a factor in this proceeding, as the petitioner is proffering the property management position for the first time.

Finally, the evidence does not satisfy 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 them is usually associated with the attainment of a baccalaureate or higher degree. The evidence of record indicates duties no more complex or specialized than would be expected of property managers who emphasize inspection, maintenance, and repair aspects of their position, and, as reflected earlier in this decision, the *Handbook* indicates that such duties are not associated with attainment of a baccalaureate or higher degree in a specific specialty.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), 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.