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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: WAC 03 195 52802 Office: CALIFORNIA SERVICE CENTER Date: JAN 03 2005

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

DISCUSSION: The director of the service center 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 corporation doing business as a full-service property investment, development, and management firm that owns and manages commercial and multi-family residential properties. In order to employ the beneficiary as a real property asset 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 because he found that the proffered position is a specialty occupation (management analyst), but that the beneficiary's degree (the equivalent of a U.S. bachelor's degree in business administration with a major in marketing) is less than the master's degree in business administration that the director determined is required to serve in that particular specialty occupation.

Counsel contends that the director erred by not recognizing that the proffered position is actually that of a real property asset manager which is addressed in the "Property, Real Estate, and Community Association Mangers" section of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook).* Counsel contends that the *Handbook* indicates that such a position is a specialty occupation. Counsel also relies upon an evaluation submitted by a professor of management and information systems at the School of Business and Economics of Seattle Pacific University (SPU). The professor opined, in part, that the proffered position is one for which the industry standard is "a college graduate with the equivalent of a U.S. Bachelor's degree in Business Administration, Management, Marketing, Finance, Accounting" and that this range of degrees is required "regardless of the size of the organization."

Based upon its independent consideration of the entire record of proceeding, including the appellate brief and its allied documents, the AAO has determined that the petition must be denied and the appeal dismissed, although on a different basis than cited by the director. The AAO is therefore exercising its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within the AAO's power to formulate.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

> Which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In its letter replying to the RFE, the petitioner describes the proffered position as follows:

> As indicated in the original filing[,] the position in question requires at a minimum a baccalaureate degree[,] for the worker will be engaged in performing professional services in regard to performing due diligence and financial analysis on potential acquisitions and on the

> Petitioner's existing holdings; in preparing budgets on an annual, semi-annual and quarterly basis; in focusing on long term strategic planning in regards to the purchase and development and disposition of real estate; in supervising the preparation of financial statements; and in preparing reports for upper management involving subject matter dealing with property status, occupancy rates as well as on other matters affecting the value and rentability of properties and there [sic] realized and potential returns.

This excerpt reveals a material deficiency common to the descriptions of the duties of the proffered position by counsel and by the petitioner, namely, the consistent use of generalized and generic language that fails to identify concrete tasks and the knowledge that they would require. Such abstract descriptions do little to meet the burden of proof, which rests solely upon the petitioner in accordance with section 291 of the Act, 8 U.S.C. § 1361. They satisfy none of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

For each of several, independent reasons the AAO discounted the SPU professor's evaluation in so far as it relates to the specialty occupation issue.

Nothing in the professor's evaluation document, the accompanying resume, or elsewhere in the record established that he has specialized knowledge on the educational requirements for real estate asset management positions. Also, the professor did not identify the factual basis for his observations. He cited no studies, research, reports, texts, articles, or other publications; and he provided no explanation of how he may have otherwise attained sufficient knowledge to pronounce the industry standard for recruiting and hiring real estate asset managers. Furthermore, the professor's opinion about educational requirements is rendered inconsequential by his failing to address the fact that he contradicted the DOL *Handbook's* information that employers of real estate asset managers do *not* normally require a degree in a specific specialty. 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 petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO agrees with counsel that the general duties of the proffered position comport with the property and real estate manager occupation, and its subset of real estate asset managers, as described at pages 77-80 of the 2002-2003 edition of the *Handbook.* However, as the following excerpt from page 78 demonstrates, the *Handbook* indicates that employers find a wide variety of college degrees acceptable - including liberal arts and generalized bachelors in business administration (BBA) degrees:

> 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. Good speaking, writing, computer, and financial skills, as well as an ability to tactfully deal with people, are essential in all areas of property management.

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)

As the AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the occupations on which it reports, and as the record contains no evidence that refutes the *Handbook's* information to the effect that employers do not normally require a specialty degree, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*). (In this regard it should be noted that, even if accepted at face value, the SPU professor's opinion, which the AAO has discounted, would not support finding a specialty occupation: the professor indicated that a generalized BBA would be acceptable.)

Also, the petitioner has not satisfied the first of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

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 discussed earlier, the *Handbook* does not report an industry-wide requirement for at least a bachelor's degree in a specific specialty. Also, the record does not include any submissions from professional associations, firms, or individuals in the industry attesting to the routine recruitment and employment of only persons with at least a bachelor's degree in a specific specialty. For the reasons earlier discussed, the SPU professor's opinion has been discounted. Moreover, it would be of no help to the petitioner even if accepted at face value, since it recognized a generalized BBA as acceptable industry-wide.

Next, because the petitioner has not presented a history of relevant hiring practices, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty, is not a factor.

Finally, the descriptions of the proffered position and its duties do not convey the complexity, uniqueness, or specialization required to qualify a position as a specialty occupation under either the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) or the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

Under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), instead of proving an industry-wide degree requirement "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 exclusively generic descriptions of the proffered position do not distinguish it as more complex than or as unique from real estate asset management positions in general. As previously discussed, those positions do not normally require a bachelor's degree or higher in a specific specialty.

The petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*) either. The evidence of record does not establish that the specific duties are so specialized and complex that their performance requires knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty. As generally and abstractly as they are described in the record, the duties appear no more challenging than those of regular real estate asset management positions for which the *Handbook* reports no requirement for at least a bachelor's degree in a specific specialty.

In sum, the petitioner failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the petition will be denied on this basis, and the director's finding that the position is a specialty occupation is withdrawn.

The director also found that the beneficiary was not qualified to perform the duties of the specialty occupation. The record reflects that the beneficiary has the equivalent of a bachelor's degree in business administration with a major in marketing. Thus, she appears qualified to perform the duties of the position. However, the position is not a specialty occupation. Thus, the petition may not be approved.

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. Accordingly, the appeal will be dismissed.

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