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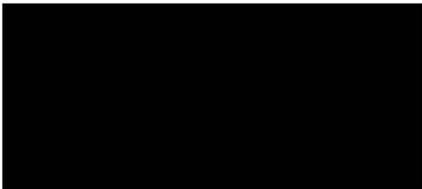


FILE: WAC 04 252 51241 Office: CALIFORNIA SERVICE CENTER Date: JUL 26 2005

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 documents have been returned to  
the office that originally decided your case. Any further inquiry must be made to that office.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
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 property management company that seeks to employ the beneficiary as a property 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 bases that the petitioner failed to establish that its proposed position was a specialty occupation and that the beneficiary was qualified to perform the duties of a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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)(ii)(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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed 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; (3) the director's denial letter; and (4) Form I-290B. The AAO reviewed the record in its entirety before reaching its decision.

The petitioner seeks the beneficiary's services as a property manager. Evidence of the beneficiary's duties includes: the Form I-129 and petitioner's support letter and the response to the RFE. The petitioner stated that the beneficiary's duties would entail, in part: maintaining a yearly budget; being responsible for all payables and receivables; reviewing intricate monthly financial statements; analyzing and interpreting expenditures and reporting them to the board; developing and implementing spread sheets and graphs pertinent to the property; facilitating the effective functioning of the Board of Directors; advising the Board of

legal theories, ethical issues, and the regulatory climate affecting the business policies and decisions proposed for their review and for passing; mediating between the Board and homeowners; regularly reviewing contractors involved with the physical and janitorial maintenance of the property; overview of building upkeep, telephone, gas and electric company contracts; monitoring the specific guidelines and protocol for contract vendors; interviewing and evaluating potential contracts for community functioning; enforcing community rules and regulations through verbal and written communication; providing rule interpretations and explanations through informative and persuasive messages; creating and gaining contact with neighborhood resources for community benefit; reviewing, planning, organizing, developing and evaluating oral and written communication in the business environment of the community; fielding phone calls and office visits each day from homeowners, regarding their concerns, property, and neighbor disputes; mediating those issues; ensuring that the four pools and spas are in compliance with the inspection reports from the county environmental services department; ensuring that the elevators are in compliance with all regulations; and daily management of property facilities including the video security systems, air conditioning and heating systems, and general waste removal. The petitioner stated that the position required a bachelor's degree and years of experience.

The director found that the evidence did not demonstrate that the proposed duties required the theoretical and practical application of a body of highly specialized knowledge requiring the attainment of a bachelor's degree in marketing. The director further found that the beneficiary's education only amounted to 2 ½ years of university education and that the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, the petitioner asserts that the proposed position qualifies as a specialty occupation and that the beneficiary qualifies to perform the duties of a specialty occupation based on a combination of her education, work experience, and certification by the National Board of Certification for Community Association Managers.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has not established that the proposed position meets any of the criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title, but reviews the specific duties of the proposed position, combined with the nature of the petitioning entity's business operations. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO routinely consults the *Handbook* for its information about the duties of particular occupations. Based on the petitioner's description and a thorough review of the *Handbook*, the AAO finds that the duties of the proposed position resemble those of property and real estate managers, who, according to the *Handbook*, perform the following duties:

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 advise the owners on 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.

In addition to fulfilling these duties, property managers must understand and comply with provisions of legislation, such as the Americans with Disabilities Act and the Federal Fair Housing Amendment Act, as well as local fair housing laws. They must ensure that their renting and advertising practices are not discriminatory and that the property itself complies with all of the local, State, and Federal regulations and building codes.

Onsite property managers are responsible for the day-to-day operations of a single property, such as an office building, a shopping center, a community association, or an apartment complex. To ensure that the property is safe and properly maintained, onsite managers routinely inspect the grounds, facilities, and equipment to determine whether repairs or maintenance is needed. In handling requests for repairs or trying to resolve complaints they meet not only with current residents, but also with prospective residents or tenants to show vacant apartments or office space. Onsite managers also are responsible for enforcing the terms of rental or lease agreements, such as rent collection, parking and pet restrictions, and termination-of-lease procedures. Other important duties of onsite managers include keeping accurate, up-to-date records of income and expenditures from property operations and submitting regular expense reports to the asset property manager or owners.

These duties are similar to such duties of the proposed position as “regularly reviewing contractors involved with the physical and janitorial maintenance of the property” and “fielding phone calls and office visits each day from homeowners, regarding their concerns, property, and neighbor disputes.”

To determine if the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) -- a bachelor's or higher degree or its equivalent, in a specific field of study is normally the minimum requirement for entry into the particular position -- the AAO turns to the *Handbook's* discussion of the educational requirements for property managers. Regarding the educational requirements for those in this field, the *Handbook* notes that 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 holding degrees in the liberal arts may also qualify. The *Handbook* notes that degree holders are preferred in the industry, not required. Furthermore, the degrees preferred are not in a specific specialty, but from a wide range of unrelated disciplines such as business, public administration or the liberal arts. The petitioner has failed to establish that a bachelor's or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The proposed position does not meet the two alternative prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) -- that the degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that it can be performed only by an individual with a degree. The petitioner has not provided any evidence that the requirement of a bachelor's degree in a specific specialty is common in the property management industry in parallel positions among similar companies. In addition, the petitioner has not shown that this particular property manager position is so complex or unique that only an individual with a bachelor's degree in a specialty can perform it.

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the employer normally requires at least a bachelor’s degree or its equivalent, in a specific field of study, for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner’s past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has not submitted evidence to establish its normal hiring practices for the proposed position. In the absence of an employment history for the position, the petitioner has not established that its position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) - the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree in a specific field of study. To the extent that they are depicted in the record, the duties of the proposed position are routine for property managers, which the *Handbook* indicates may be performed by persons without bachelor’s degrees in related fields. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(4).

No evidence contained in the record demonstrates that the proposed position is a specialty occupation. The petitioner has not overcome the director’s decision in this regard. The AAO has determined that the petition cannot be approved on the basis that the proposed position is not a specialty occupation. Therefore, it will not address the issue of the beneficiary’s qualifications. A beneficiary’s credentials to perform a particular job are relevant only when a job is found to be a specialty occupation.

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