



U.S. Citizenship  
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FILE: EAC 02 153 53946 Office: VERMONT SERVICE CENTER Date: NOV 22 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.

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 The director's decision is withdrawn and the matter remanded for entry of a new decision.

The petitioner owns real estate. It seeks to employ the beneficiary as a financial manager. The petitioner, therefore, 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a part-time financial manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail directing the operation and collection of rental income; advising regarding changes and improvements needed to property; handling bookkeeping and accounting requirements such as business tax returns, financial statements, and regulating cash flow; maintaining the real property in a cost-effective manner; projecting income; evaluating the feasibility of new acquisitions or selling existing properties; evaluating the monthly reports of property managers and analyzing potential economies; establishing credit policies and ceilings; evaluating credit histories and determining whether to renegotiate payment terms with tenants; negotiating construction financing with banks; and supervising property managers. The petitioner states that the beneficiary is qualified for the proposed position based on his education, which is a baccalaureate degree in commerce with a major in accounting from an institution in the Philippine Islands.

In denying the petition, the director stated that the proposed position resembles a property manager as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a bachelor's degree in a specific specialty. The director stated that the petitioner does not have past practice of requiring a baccalaureate degree in a specific specialty for the proposed position. The director discussed *Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). According to the director, the proposed position does not require a baccalaureate degree in a specific specialty as it is not specialized, complex or unique.

On appeal, counsel distinguishes the proposed position, a financial manager, from that of a property manager. Counsel states that the petitioner hires property managers and property management firms to handle the financial operations of the petitioner's property. The proposed position is complex, counsel states, because it involves turning around a failing business. Counsel maintains that the petitioner normally requires a baccalaureate degree for the proposed position. Counsel submits the petitioner's affidavit, organizational charts, a letter from Parent Management Company, weekly report sheets, a document entitled "Petty Cash Fund," statements regarding a grove, statements and checks from Menacho Realty, Inc., a document from Jane Hayes (a property manager), excerpts from the *Handbook*, a document entitled "Job Duties," and an excerpt entitled "Financing Real Estate Development."

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The record reflects that the petitioner owns and manages real estate. The income tax records indicate that the petitioner owns about 18 real

properties, and a document submitted on appeal shows that the petitioner's real estate holdings include commercial and residential property: residential housing, apartments, a restaurant, a six-unit hotel, a laundromat, two farms, a cottage, and mobile homes. Based on the petitioner's job description and the evidence in the record, the petitioner has established that the nature of the proposed duties is specialized and complex, requiring knowledge attained from a baccalaureate or higher degree in accounting, finance, real estate, or related fields. Accordingly, the petitioner establishes the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petition may not be approved however, as the record does not indicate that the beneficiary is qualified to perform the duties of the proposed position. The record contains a copy of the beneficiary's baccalaureate degree in commerce (with a major in accounting); however, no evidence establishes the equivalency of the degree to a baccalaureate degree from an accredited college or university in the United States.

As the director did not address the beneficiary's qualifications the director's decision will be withdrawn and the petition remanded so that the director may rule on the issue. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the proposed duties, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

**ORDER:** The director's November 7, 2003 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.