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U.S. Citizenship
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Services

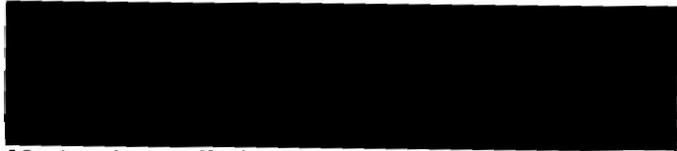
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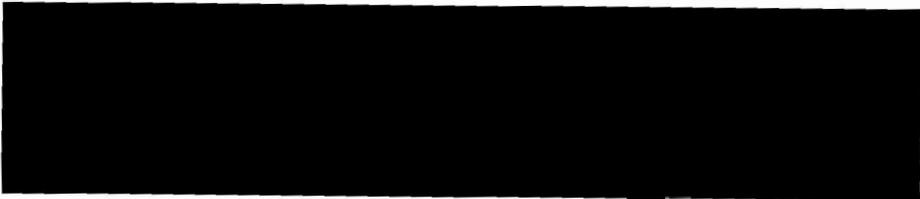
FILE: WAC 04 210 53288 Office: CALIFORNIA SERVICE CENTER Date: FEB 21 2006

IN RE: Petitioner:
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:



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 California 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 engaged in the business of managing parking facilities and has 65 employees. It seeks to hire the beneficiary as a property manager. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B, with counsel's brief and additional evidence. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a 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 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.

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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. 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 (5th 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 baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a property manager. Evidence of the beneficiary’s duties includes: the Form I-129; and a July 14, 2004 letter from the petitioner.

At the time of filing, the petitioner stated that the beneficiary’s duties in its entry-level position entail: planning, directing and coordinating the management of commercial properties zoned as parking facilities; reviewing and monitoring all operational procedures to ensure that established protocols are observed and followed in accordance with the standard operational procedural guidelines for all 21 parking facilities within the San Francisco Bay Area; overseeing planned alterations to, or maintenance, upkeep or reconditioning of the commercial properties; supervising on-site parking managers and training them in both company and industry management procedures; conducting occupational safety and hazards inspections and audits for all parking facilities using established company protocols and government regulatory procedures; preparing and overseeing customer service surveys on a monthly basis, and reporting survey results to the regional manager; assisting the regional manager with the preparation of scheduled financial statements for the parking facilities, regular individual facility performance reports and property inventories to be prepared for senior management. The petitioner indicated that this is a professional position for which a bachelor’s degree in management, business administration, marketing or the equivalent is normally the minimum standard.

In his denial, the director noted that the duties of the position appear to reflect many of the duties performed by property managers as described in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*. The director referred to the *Handbook*, which indicated that the duties of a property manager include overseeing the performance of income producing commercial or residential properties, and ensuring that real estate investments achieve their expected revenues. The director noted that the *Handbook* stated the following about the training and education for this occupation:

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.

Many people enter property management as onsite managers of apartment buildings, office complexes, or community associations or as employees of property management firms or community association management companies. As they acquire experience working under the direction of a property manager, they may advance to positions with greater responsibility

at larger properties. Those who excel as onsite managers often transfer to assistant property manager positions in which they can acquire experience handling a broad range of property management responsibilities.

The director found that although a baccalaureate level of training is generally required, the position of property manager is an occupation that does not require a baccalaureate level of education in a specific specialty as a normal minimum for entry into the occupation. The director found that the *Handbook* indicated that there is no clear standard for how one prepares for a career as a property manager. The director found that the petitioner had not submitted documentation to show that the degree requirement is common to the industry in parallel positions among similar organizations. The director found that the petitioner had not submitted sufficient documentation to show that this position involves duties seen as either unique or complex so that only an individual with a degree in a specific specialty could perform them. The director found that the petitioner had not established that it requires a degree or its equivalent in a specific specialty for the position. The director noted that the record contained insufficient information to establish that the duties to be performed are so specialized and complex that the knowledge to perform the duties would be associated with the attainment of a baccalaureate or higher degree. The director found that the proffered position did not meet any of the above listed criteria.

On appeal, counsel submits classified advertisements for parking and property management positions to support her contention that the degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submits a letter from the chairman of the board of a valet parking service. Counsel asserts that the duties of the proffered position are specialized and complex and cannot be performed by someone who has not received at least a bachelor's degree.

On appeal, counsel augments the position description with additional duties including negotiating contracts with outside vendors; monitoring and responding to customer service matters to retain existing customers; and administering the operations of the facilities within budgetary constraints including handling financial marketing and tax issues. However, the additional duties submitted by counsel materially change the proffered position. The initial petitioner's letter did not mention any duties requiring the beneficiary to be familiar with its budget or to handle financial, marketing, and tax issues, only that the incumbent in the position would assist the regional manager in the preparation of scheduled financial statements. The initial petition also did not indicate that the beneficiary would be solving customer problems but preparing and overseeing customer surveys. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Therefore, only the duties of the proffered position as described in the petitioner's initial letter will be reviewed.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular

position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 812 F. Supp. 872, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum requirement for entry into the occupation, as required by the Act.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, and, accordingly, considered the evidence of record in the light of the 2006-2007 edition of the *Handbook*. As noted by the director, the duties of the proffered position are those of a property manager. As indicated in the *Handbook*, the position of property manager is an occupation that does not require a baccalaureate level of education in a specific specialty as a normal, minimum for entry into the occupation.

The petitioner fails to satisfy the first criterion. As the *Handbook* indicates only that employers prefer to hire individuals with degrees, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the proffered position as a specialty occupation under the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or is so complex or unique that it can be performed only by an individual with a degree - counsel submits several internet job postings for the position of property manager. The advertising firms are not, however, similar to the petitioner. Additionally, the level of responsibility of the duties of the positions in the internet postings is different from that of the proffered position. For example, the duties of the Rutgers University's position of director of parking and transportation services include managing a budget in excess of \$10.7 million and developing and overseeing a \$6.1 million dollar transportation contract. The duties of the Arizona State University's position of program manager, customer service, include collaborating with university departments to facilitate employee parking programs. The duties of the director position at the University of Nebraska, Lincoln, include overseeing facility operation, budget management, bond requirements, payroll process and personnel relations. The position posting for a general manager-Cleveland at Central Parking does not provide a meaningful list of duties and indicates that a four-year degree is preferred but does not indicate a specific specialty. Accordingly, these job postings do not establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner submits a letter from the chairman of the board of a valet parking service with over one thousand employees. The author states "I cannot put more emphasis on the importance of an undergraduate degree when it comes to hiring managers and administrators. Our preference is candidates majoring in Business Management and Administration." The author of this letter indicates that a "bachelor[']s degree has become the minimum requirements [sic] for any executive level position in our industry." The letter is from a company much larger than the petitioner and refers to the minimum requirements for an executive level position. The letter is not from a similar organization nor does it indicate that the duties for which the company requires a degree are parallel to those of the proffered position. This letter is insufficient to

establish that a specific degree requirement is common to the industry in parallel position among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner stated that the proffered position is an entry-level position and has not provided evidence of the complexity of the position. Again, the *Handbook* reveals that the duties of the proffered position are performed by property managers, a position that does not require the minimum of a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): the petitioner normally requires a degree or its equivalent for the position. Counsel states that the petitioner must hire managers who hold at least a bachelor's degree or its equivalent in business administration with a concentration in management, finance, marketing, or a related degree. The petitioner has not provided evidence that its managers hold bachelor's degrees.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that 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 baccalaureate or higher degree. Counsel asserts that "the duties of the position are complex and should not be viewed in isolation. They must be assessed based on the clients that the petitioner serves, the services provided and the number of locations in which these duties must be conducted." The majority of the listed duties are routinely performed by property managers. The petitioner stated that the proffered position was an entry-level position. The petitioner has not described the duties of the proffered position in relation to senior management. The petitioner has not distinguished the duties of the proffered position from the duties that are normally performed by a property manager. It cannot be concluded that 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 baccalaureate or higher degree. Once again, the *Handbook* reveals that the duties of the proffered position are performed by property managers, an occupation not requiring a bachelor's degree in a specific specialty.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the petitioner asserts that the beneficiary's work experience was evaluated to be the equivalent of a Bachelor's of Business Administration degree with a concentration in management. In support of this assertion, the petitioner submitted an experience evaluation from a professor of marketing at the Lubin School of Business, Pace University, New York. This evaluation stated that the beneficiary's 12 years and one month of work experience was equivalent to a bachelor's degree. The petitioner did not submit evidence that the experience evaluation was from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). The record does not indicate that Pace University has a program for granting credit based on training and experience.

The petitioner has not met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) and has not established that the beneficiary has the equivalent of a bachelor's degree in the specific specialty required by the 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.