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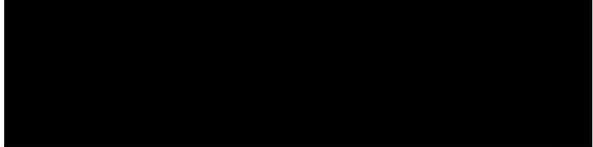
U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
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Services

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FEB 26 2004

FILE: LIN 02 226 52158 Office: NEBRASKA SERVICE CENTER Date:

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:
[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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and subsequently affirmed his denial on counsel's motion to reopen. 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 real estate mortgage loan service firm that seeks to employ the beneficiary as a mortgage loan officer. 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief and other documentation.

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 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; (5) the petitioner's motion to reopen/reconsider; (6) the director's decision affirming the denial of the petition; and (7) 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 mortgage loan officer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 1, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail interviewing loan applicants in Spanish and examining, evaluating, and authorizing or recommending approval of real estate mortgage loans. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in finance or economics.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position of a loan officer was not a baccalaureate degree or its equivalent in a specific specialty. The director pointed out that the *Handbook* describes how individuals without college degrees can become loan officers by advancing through the ranks from positions such as teller or customer service representative. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the a baccalaureate degree is the normal entry requirement for the proffered position, and that the proposed duties are so specialized and complex as to be associated with the attainment of a baccalaureate degree in a specific specialty. Upon review of the record, however, the petitioner has established neither the two criteria highlighted on appeal, nor any of the other criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

Since counsel asserts that the petitioner meets the first and fourth regulatory criteria mentioned above, the AAO will analyze these two points only. The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. On appeal, counsel states that the *Handbook's* use of the word "generally" when referring to the industry's degree requirement for loan officers means that a degree is a minimum qualification for entry into this position, such as it would be for an architect or an engineer. It is incorrect to focus solely on the word "generally" and conclude that a degree is thus a minimum requirement; the entire section must be considered. Counsel fails to focus on a subsequent phrase in the *Handbook* wherein reference is made to the apparent feasibility of becoming a loan officer without a college degree or its equivalent, via rising through the ranks from other customer-oriented positions. The wording of the *Handbook* does not imply that the latter is unusual or rare.

Regarding counsel's emphasis on a prior AAO decision in which a financial officer was found to be a specialty occupation, the director's response that the Service (now CIS) is not required to follow prior decisions which may have been erroneous is not "inconsistent," as counsel states. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The evidence in this record of proceeding does not establish that a bachelor's degree is the normal minimum requirement for entry into the position of loan officer. The petitioner has not established 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Turning now to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4), that 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, the evidence is again found to be insufficient. There is no evidence to show that the proffered position requires a higher degree of knowledge and skill than other loan officer positions.

The requirement that the incumbent speak Spanish and English has not been shown to be an element that sets this position above others in its field. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

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.