

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 real estate and mortgage finance company that seeks to employ the beneficiary as an assistant loan officer. 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 previously submitted evidence.

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; 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 an assistant loan officer. Evidence of the beneficiary's duties includes: the Form I-129; the December 10, 2002 letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: preparing prequalification documents for loan customers; analyzing the loan qualification amount as determined by the "point system"; opening escrow accounts; ordering appraisals; communicating with various investors; and providing documentation to satisfactorily close the loan. The petitioner stated that a candidate must possess a bachelor's degree in economics.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position resemble those performed by a loan counselor and officer. The director stated that based on the information in the *Handbook*, a bachelor's degree would not be required to perform the duties of an assistant loan officer.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel states that the petitioner normally requires a bachelor's degree or its equivalent for the proffered position, and counsel refers to the resume of an employee. Counsel contends that the director erroneously ignored the submitted job postings, and erred by requesting evidence that would show that the position could never be performed by a person with less than a bachelor's degree. According to counsel, a bachelor's degree is often required for loan officer positions because the position involves reviewing and analyzing financial documents for a loan. Counsel claims that the director misinterpreted the *Handbook's* language regarding loan counselors and officers, and ignored the DOL's statement that a bachelor's degree or its equivalent is accepted for this position. Counsel contends that according to the case of *Tapis Int'l vs. INS*, 94 F.Supp. 2d 172 (D.Mass. 2000), the term "equivalent" means that in the absence of a degree, qualification for the position must include skill, knowledge, work experience, or training. Counsel further contends that a bachelor's degree is the minimum requirement for entry into an assistant loan officer position.

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 petitioner's response to the request for evidence included a detailed job description that differed significantly from the one in the petition. The modified description stated, in part, that the beneficiary "develops relationships with commercial and residential real estate agencies" for referrals and would engage in "looking for potential clients and assisting them in applying for loans" and would "explain the different types of loans and credit terms that are available to the client." These duties were not explicitly or implicitly mentioned in the initial petition; however, they materially change the job description.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Given the material change in the job duties in the petitioner's response to the request for evidence, the AAO will consider only the position's duties and requirements as stated in the initial petition.

The AAO first 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). When 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 for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A careful review of the *Handbook* discloses that the duties of the proffered position are performed by a loan interviewer and loan clerk – positions that the DOL states do not require a bachelor's degree. Loan interviewers and clerks review individuals' credit history and obtain the information needed to determine the creditworthiness of applicants for loans and credit cards. These workers spend much of their day on the telephone, obtaining information from credit bureaus, employers, banks, credit institutions, and other sources to determine an applicant's credit history and ability to pay back a loan or charge. Loan clerks, also called loan processing clerks, loan closers, or loan service clerks, assemble documents pertaining to a loan, process the paperwork associated with the loan, and ensure that all information is complete and verified. Mortgage loans are the primary type of loan handled by loan clerks, who also may have to order appraisals of the property, set up escrow accounts, and secure any additional information required to transfer the property.

According to the *Handbook*, the specific duties of loan clerks vary by specialty. Loan closers, for example, complete the loan process by gathering the proper documents for signature at the closing, including deeds of trust, property insurance papers, and title commitments. They set the time and place for the closing, make sure that all parties are present, and ensure that all conditions for settlement have been met. After settlement, the

loan closer records all of the documents involved and submits the final package to the owner of the loan. Loan interviewers have duties that are similar to those of loan clerks. They interview potential borrowers, help them fill out applications for loans, and then investigate the applicant's background and references, verify the information on the application, and forward any findings, reports, or documents to the company's appraisal department. Finally, interviewers inform the applicant as to whether the loan has been accepted or denied.

Based on the information in the *Handbook*, all of the proffered position's duties - preparing prequalification documents; analyzing the loan qualification amount; opening escrow accounts; ordering appraisals; communicating with investors; and providing documentation to satisfactorily close the loan - are embodied in the job description of the loan interviewer and loan clerk. As such, the proffered position would not require a bachelor's degree or its equivalent as the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to the submitted job postings. The postings are not persuasive. Manpower Professional seeks a lender representative and the duties primarily involve soliciting new business; this differs from the proffered position's duties which entail processing loans. The Daum Commercial Real Estate posting does not indicate that a bachelor's degree must be in a specific specialty, and most important, the duties of the commercial real estate broker differ dramatically from the proffered position. The evidence from Lender Careers and the Career Center of San Jose State University (SJSU) describes how to become a mortgage loan officer. This is irrelevant given that the duties of the proffered position correspond to a loan interviewer and loan clerk.

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 resume from one of the petitioner's employees fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The resume indicates that the employee holds a bachelor's degree in graphic design. This shows that the petitioner does not require a bachelor's degree in a specific specialty - such as economics - to perform the duties of an assistant loan officer.

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. As previously discussed, the duties of the proffered position are performed by a loan interviewer and loan clerk, positions that do not require 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.

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.

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