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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 037 53580 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



AUG 01 2005

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:

SELF-REPRESENTED

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 a full service mortgage broker and seeks to hire the beneficiary as a senior loan processor. 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 request for evidence; (3) the petitioner's response to the director's request for evidence; (4) the director's denial letter; and (5) Form I-290B, with petitioner's brief and new 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 (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 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 senior loan officer. Evidence of the beneficiary’s duties includes: the Form I-129 and the petitioner’s letter of support and the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail being responsible for the entire loan processing procedure within the company; providing precise and top quality loans underwriting and processing services in compliance with all applicable laws and regulations to loan officers of the petitioner; providing professional loan consultation with regard to credit analysis, scenario analysis, and market trends to borrowers during the processing; performing market investment analysis and assessing company’s current marketing strategy; developing business opportunities for the petitioner with other races particularly Asian communities. The petitioner indicated that the petition requires a bachelor’s degree in economics, finance or related fields, such as business administration.

The director requested additional evidence, specifically, a breakdown of the percentage of time to be spent on each duty. The petitioner responded to the director’s request and provided a more detailed job description as follows:

The first duty is to be responsible for top quality loan underwriting and processing in compliance with all applicable laws and regulations. In specific, he/she verifies loan applications and supporting credit data; analyzes loan applicants’ financial status and potential risk; structures the loan through different scenario analysis and obtains loan approvals through FannieMae Desktop Underwriting and automatic underwriting systems of close to 100 lenders; monitors the flow of the loans through submission to closing process. The job duties also include periodically evaluating present processing systems and procedures, recommending improvements in areas or functions as relating to processing directly to the president of the company and solving problems during processing (70% of time.)

The second duty is to perform economic research and market analysis for the petitioner to examine the existing business and explore more business opportunities. In specific, he/she is responsible for management of the company’s database, conducts economic and statistical analysis of pipeline reports of the petitioner’s database and client referral database using

software like Calyx Point, E-view and provides monthly report to the president of the company for business performance and recommendations for future business and marketing improvement. He/she is also involved in developing business opportunities for the petitioner with other races particularly the Asian communities (30% of time.)

In his denial, the director noted that the duties of the proffered position reflect the duties of a loan officer and counselor as listed in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). With respect to the educational qualifications required of loan officers and counselors, the director noted that the *Handbook* indicated:

Most employers prefer applicants who are familiar with computers, and their applications in banking. For commercial or mortgage loan officer jobs, training or experience in sales is highly valued by potential employers. Loan officers without college degrees usually have reached their positions by advancing through the ranks of an organization and acquiring several years of experience in various other occupations, such as teller or customer service representative.

The directed stated that this information indicates that although many entry-level applicants have a baccalaureate level of training, it is not a normal, industry-wide minimum requirement for entry into the occupation and determined that the proffered position was not a specialty occupation.

On appeal, the petitioner states the position of senior loan officer in its organization is unique among its competitors due to its job duties. Additionally, the petitioner indicates that it is not suitable for the director to use the *Handbook* to make his decision because the training and qualifications described apply to a loan officer and counselor but not to the petitioner's senior loan processor position.

Factors often considered by Citizenship and Immigration Services (CIS) when determining the industry standard 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." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations and when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

The *Handbook* reveals that the beneficiary's duties are most similar to those of a loan counselor and officer, an occupation that is not a specialty occupation. According to the *Handbook*, loan counselors and officers assist individuals and businesses in taking out loans. The *Handbook* states that loan officers facilitate this lending by finding potential clients and assisting them in applying for loans. The *Handbook* adds that loan officers also gather personal information about clients and businesses to ensure that an informed decision is made regarding the credit-worthiness of the borrower and the probability of repayment. Additionally, the *Handbook* notes that loan counselors provide guidance to prospective loan applicants who have problems qualifying for traditional loans.

As noted by the director, the educational requirements for loan officers in the *Handbook* do not establish that a degree in a specialty is required for entry into the occupation. There is insufficient evidence in the record to

establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the senior loan processor position.

The petitioner has not established the second criterion that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

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. The petitioner states that the position requires the candidate to have enough knowledge and experience in loan processing but also requires the candidate to have a high level of skill in effective communication, organization, time management, self-motivation, work independence and analysis. The petitioner asserts that these skills are hard to obtain without adequate academic training. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific speciality. The duties parallel those in the *Handbook* for a loan officer and counselor, occupations that do not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Therefore, for the reasons related in the preceding discussion, 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 beneficiary has obtained her Master's degree in the area of economics yet the submitted educational evaluation indicates that the beneficiary has achieved the equivalent of a Master's degree in Agricultural Science. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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.