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FILE: WAC 05 159 52695 Office: CALIFORNIA SERVICE CENTER Date: AUG 10 2007

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.

*James Blunzinger, for*  
Robert P. Wiemann, Chief  
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 mortgage brokerage firm. It seeks to employ the beneficiary as a loan processor. The petitioner endeavors to employ the beneficiary in the nonimmigrant classification as a 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 on March 28, 2006, concluding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation, received on August 29, 2005; (2) the director's request for additional evidence, dated October 17, 2005; (3) counsel's response to the director's request for evidence and supporting documentation, dated January 6, 2005; (3) the director's denial letter, dated March 28 2006; and (4) the Form I-290B, dated April 28, 2006, and supporting documentation. 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, the 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 loan processor. On the Form I-129, the petitioner stated that the duties of the proposed position would consist of “some clerical work.” The petitioner submitted a job description, which further described the beneficiary’s proposed duties as follows:

Coordinate, review and update loan database (Calyx Point) with loan officer’s borrowers’ input.

Monitors documents such as, credit reports, appraisals, title work, verifications, surveys, final inspections, construction to permanent, evidence of insurance and any other documentation required to finalize a loan package. Updates information onto loan database (Calyx Point) as needed and maintains data integrity.

Inform customers, loan officers, and any 3<sup>rd</sup> party vendors to transaction on progress of loan.

Create and generate weekly and monthly meaningful reports to assist loan officers and management in decision-making using ACCESS and Calyx Point.

Keep track on borrowers contact information on ACT database. Integrates ACT database with Calyx Point to extract borrowers information as needed. Extracts information from [sic] database for mailing list for refinance and marketing purposes.

Monitor, update and recommend management for appropriate technology related upgrades based on the revolution and growth in the mortgage business needs.

Provide technical and networking support for loan officers and management with existing computers and servers.

Help to upgrade present Website and regularly update information.

The petitioner indicated that it required two years of experience in the mortgage industry, and that a degree in business administration or information technology was "preferred" for the position. Thus, it did not indicate a degree requirement for the position.

The director determined that the petitioner had submitted insufficient evidence to process the petition. On October 17, 2005, the director requested that the petitioner submit the following documentation: (1) a detailed statement articulating the beneficiary's proposed duties and day-to-day responsibilities, including the percentages of time the beneficiary would spend performing those functions each day, and the specific tasks that require the expertise of someone with a bachelor's degree; (2) evidence to establish that the position meets one or more of the standards of specialty occupation; (3) the petitioner's job announcement for this petition, and evidence of any other forms of recruitment utilized by the company for the proffered position; (4) evidence showing that the petitioner and similarly situated businesses in the same industry require individuals with a bachelor's degree in a specific field of study to fill the position; and, (5) an explanation of how many other individuals are currently employed in the position of loan processor, how many individuals have filled this position in the past, and documentary evidence to establish those employees had a bachelor's degree.

In response to the director's request for evidence, the petitioner provided a weekly job description for the position of loan processor that included the above-mentioned duties and added the following; new, duties:

Assists the managers in assisting with origination, following up with processing of and closing loans. Ability to close loans in a timely manner.

Train and supervise new loan officers in the origination process[,] introduce to them the lenders, coach them on different lenders' programs and reading and understanding of rates.

Organize all documentation submitted by loan officers and verify completeness.

Analyze loan files; analysis of borrower's income (review paystubs, tax returns, W2, rental income), asset, debt and credit to ensure that each file meets [sic] given lenders underwriting criteria.

Coordinate with lenders, borrower, escrow, appraisers and other external customers to satisfy the loan conditions.

Research rates, lender niches, mortgage trends and laws and new application that can improve business needs. Create a lender's matrix.

The director denied the petition on September 29, 2003, concluding that the proffered position is not a specialty occupation.

On appeal, counsel states the petitioner has overcome the objections of CIS. According to counsel, the position of loan officer does not "merely involve clerical work" and it requires a person with a bachelor's degree. Counsel submits Internet job postings as evidence that the position requires someone holding at least a bachelor's degree to perform the job duties associated with the proffered 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 AAO find that the proffered position is not a specialty occupation.

As a preliminary matter, the AAO notes that the petitioner altered both its job description and its minimum entry requirements for the position in its January 19, 2006 response to the director's request for additional evidence. While the initial job description focused on clerical duties,<sup>1</sup> such as reviewing and updating the petitioner's database, monitoring documents, responding to customers' status inquiries regarding loan applications, generating weekly reports, maintaining borrowers' contact information, and providing technical support, the new job description set forth in the response added significant new duties. For example, under the new job description, the beneficiary was to perform such tasks as recommending whether loans be denied. The AAO notes further that the petitioner amended its minimum requirements. While a degree was initially simply a matter of preference, it was now a requirement. The AAO finds that these changes were not mere clarification but rather constituted a material alteration of the petition as originally filed.

In a similar note, counsel's contention on appeal that the petitioner requires "a minimum of Bachelor's Degree, and even a Master's Degree," is unpersuasive. Again, the AAO notes that the petitioner itself clearly stated that a degree is merely "preferred," and counsel's statement conflicts with the petitioner's earlier assertion. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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<sup>1</sup> The petitioner stated, on the Form I-129, that the proposed position consisted of clerical duties.

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 offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. *See Matter of Michelin Tire*, 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. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

For the same reason, the petitioner's attempt to re-title the position on appeal, this time to that of a loan counselor, will not be considered.

In determining whether a proposed 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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. In reviewing the 2006-2007 edition of the *Handbook*, the AAO finds that the duties and responsibilities of the proposed position are encompassed within the *Handbook's* entry of brokerage clerks as discussed below.

Although counsel states on appeal that the petitioner requires the services of a loan counselor, the AAO finds that the portions of the proposed duties are analogous to those of brokerage clerks. In its discussion of the duties of brokerage clerks, the 2006-2007 edition of the *Handbook* states the following:

Brokerage clerks handle much of the day-to-day operations of brokerages, performing a number of different jobs with a wide range of responsibilities; all involve computing and recording data pertaining to securities transactions. Brokerage clerks also may contact customers, take orders, and inform clients of changes to their accounts. Some of these jobs are more clerical and require only a high school diploma, while others are considered entry-level positions for which a bachelor's degree is needed. Brokerage clerks, who work in the operations departments of securities firms, on trading floors, and in branch offices, also are called margin clerks, dividend clerks, transfer clerks, and broker's assistants.

The broker's assistant, also called sales assistant, is the most common type of brokerage clerk. These workers typically assist two brokers, for whom they take calls from clients, write up order tickets, process the paperwork for opening and closing accounts, record a client's purchases and sales, and inform clients of changes to their accounts. All broker's

assistants must be knowledgeable about investment products so that they can communicate clearly with clients. . . .

Therefore, based upon its reading of the *Handbook*, the AAO concludes that the duties of the proposed position, as described by the petitioner in its letter of support, reflects the duties described in the *Handbook* as a brokerage clerk.<sup>2</sup> Having made such a determination, the AAO next turns to the *Handbook* to determine whether this occupation normally requires applicants for employment to have the minimum of a baccalaureate or higher degree, or its equivalent, in a specific field.

The *Handbook* states the following regarding the educational requirements for brokerage clerks:

Depending on the job description, brokerage clerks can be high school or college graduates. Positions dealing with the public, such as broker's or sales assistant, and those dealing with more complicated financial records are increasingly being held by college graduates.

These findings do not support a finding that a bachelor's degree is normally required for entry into this occupation. The fact that some positions are "increasingly being held by college graduates," is not synonymous with a finding that a bachelor's degree in a specific specialty is a minimum requirement for entry into this occupation. Moreover, the AAO finds that the duties to be performed, in this particular position, do not require a bachelor's degree. Finally, the AAO refers to the petitioner's initial job description which indicated that a degree is "preferred." Again, a preference is not synonymous with the requirement of a bachelor's degree in a specific specialty. It is clear that a bachelor's degree, or its equivalent, is not the normal minimum requirement.

Also, the AAO notes that the petitioner submitted a job description with the initial petition that stated a bachelor's degree is preferred. The fact that a bachelor's degree is "preferred," is not synonymous with the standard imposed by the regulation of normally requiring a bachelor's degree, or its equivalent. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question.

For all of these reasons, the AAO finds that the position does not qualify as a specialty occupation on the basis of a degree requirement under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the

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<sup>2</sup> As previously noted, the petitioner stated, on the Form I-129, that the proposed position consisted of "some clerical work."

position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the six job postings submitted by counsel on appeal. However, counsel has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in positions that are parallel to the proffered position and found in organizations similar to the petitioner.

There is no information in the record to establish that the companies advertising their vacancies in the submitted job postings are similar in size, scope, or scale of operations, business efforts, or expenditures to the petitioner, a mortgage brokerage firm with 150 employees. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO has no basis to conclude that any of the job postings submitted by counsel are from organizations that may be considered "similar" to the petitioner.

Moreover, these advertisements are for two loan associates, a loan processor/junior analyst, a loan officer/broker, a financial analyst, and an account executive/wholesale mortgage positions. The duties posted on the advertisements are different from the duties of the proffered position, which is more similar to a brokerage clerk. Thus, it does not appear that the positions of the advertisements are in fact "parallel" to the position proposed here. The AAO notes that two of the advertisements require only some college coursework and do not require a bachelor's degree. In addition, advertisements require a "bachelor's degree," with no particular field of study mentioned, thus it does not establish a degree requirement in a specific specialty. Again, 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.<sup>3</sup> As noted above, the positions advertised share too few similar duties as the petitioner's proposed position, thus, they are not parallel positions. Finally, the AAO notes that six postings are too few to establish an industry-wide standard.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a demonstration

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<sup>3</sup> See also *Matter of Michael Hertz Associates*, 19 I & N Dec. 558 (Comm. 1988).

that the position is so complex or unique that it can only be performed by an individual with a degree. There has been no demonstration that the proposed position is more complex or unique than the general range of computer system analysts in other, similar organizations, which would not normally require a degreed individual. The *Handbook* indicates that such position generally does not normally require at least a baccalaureate degree in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions. Moreover, the AAO notes that the petitioner posted in the job description that a bachelor's degree in business administration or information technology is preferred, but it does not seem to be required, which precludes classification as a specialty occupation under this criterion.

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In its response to the director's request for evidence, the petitioner submitted a letter, dated December 28, 2005, and stated the following:

We recognize the advantage of a candidate having a college degree and some of our Managers, like those of DEMANCO, may well require a college degree for their loan processors. We have, and have had, Loan Processors throughout the company with college and even post-graduate degrees, but it would be difficult to determine a precise number and the particular disciplines.

Again, the petitioner's letter indicates that a bachelor's degree is preferred but has not been a mandatory requirement in order to fill the proposed position. In addition, as noted above, the job description submitted by the petitioner with the initial filing indicated that a bachelor's degree is preferred. Again, a preference is not synonymous with the requirement of a bachelor's degree in a specific specialty.

Accordingly, the petitioner has not established the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position 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 AAO refers to the *Handbook* excerpts quoted previously in this decision, which state that a bachelor's degree in a specific specialty is not the normal minimum entry requirement for positions such as the one proposed here. The duties of the proposed position do not appear more specialized and complex than those of the corresponding positions as set forth in the *Handbook*. The AAO finds nothing in the record to indicate that the beneficiary, in her role as a loan processor, as defined in the instant petition, at the petitioner's place of business, would face duties or challenges any more specialized and complex than those outlined in the *Handbook*.

To the extent that they are depicted in the record, the duties of the proposed position 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. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The proposed position in this petition is not a specialty occupation, so the beneficiary's qualifications to perform its duties are inconsequential. Accordingly, the AAO will 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.