

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

D2

PUBLIC COPY



FILE: WAC 04.092 53082 Office: CALIFORNIA SERVICE CENTER Date: **JAN 20 2006**

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:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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 sustained. The petition will be approved.

The petitioner is a mortgage loan broker that seeks to employ the beneficiary as a senior accountant. 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 on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(1) of 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 a senior accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the proposed position entails preparing payroll and mandatory filing of forms; administering benefit packages; preparing managerial reports such as variance analysis, loan volume, break-even analysis, agents and branch production, and annual budget forecasts; preparing financial statements such as the balance sheet and income statement; handling disbursement of checks, receivables, payables, and deposits; coordinating and collaborating with regulatory agencies; performing bookkeeping and account reconciliation; maintaining and developing the computerized accounting system and operations; consulting with management regarding business operations and efficiency and control; and collaborating with the three branches with regards to loan processing procedures. The petitioner seeks to employ the beneficiary for the proposed position. The International Credential Evaluators, Inc. has determined that the beneficiary has the educational equivalent to a baccalaureate degree in accounting from an accredited university in the United States.

The director stated that the proposed duties reflect those of bookkeeping, accounting, and auditing clerks as those occupations are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that those occupations do not require a baccalaureate degree. The director also stated that the petitioner does not engage in the type of business in which an accountant is normally employed on a full or part-time basis. According to the director, the petitioner's operation does not have the scale or complexity that would require the services of a full or part-time accountant, and the record does not establish that the duties require complex or advanced accounting. The director concluded that the beneficiary would not be used exclusively in the review, analysis, and reporting of accounting records; and that the actual duties of the job offered could be performed by an experienced person whose educational training falls short of a bachelor's degree.

On appeal, counsel states that the petitioner, a mortgage loan broker, has 18 employees and an annual gross income of \$5.7 million. Counsel asserts that the proposed duties are distinguishable from those of a bookkeeper and that the petitioner's growth plan necessitates the employment of a senior accountant.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is a specialty occupation.

The first criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A) requires that the petitioner establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The record indicates that the submitted organizational chart shows that the petitioner has three branch loan offices: Dublin, Discovery Bay, and Pleasant Hill. The record also reflects that the petitioner has 16 employees and 18 loan agents that are independent contractors. The I-129 petition indicates that the petitioner earned gross annual revenue of \$5,676,865. Based on the petitioner's job description and the evidence in the record, the

proposed position appears to be that of an accountant, which requires a bachelor's degree in accounting or a related field, as that occupation is depicted in the *Handbook*.

The AAO will now address whether the beneficiary is qualified for the proposed position.

The record contains a copy of the beneficiary's bachelor of science in commerce, transcript, and evaluation from the International Credential Evaluators, Inc. The evaluation states that the beneficiary's degree is the educational equivalent to a baccalaureate degree in accounting from an accredited university in the United States. Accordingly, the beneficiary is qualified for the proposed position.

As related in the discussion above, the petitioner has established that the proffered position is a 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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.