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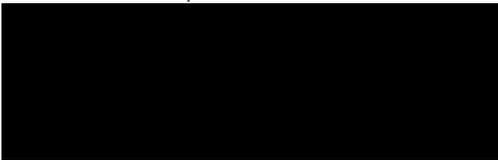
**FILE:** WAC 97 196 51043 **Office:** CALIFORNIA SERVICE CENTER **Date:**

**IN RE:** Petitioner:  
Beneficiary



**PETITION:** Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

**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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decisions of the AAO and the director will be withdrawn and the matter will be remanded to the director for further consideration.

The petitioner is a transportation services business that seeks to employ the beneficiary as a Japanese Market Research Analyst, Level I. 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 determined that the proffered position qualified as a specialty occupation but denied the petition on the basis that the beneficiary is not qualified to perform the duties of a specialty occupation. The AAO affirmed the director's findings. On motion, counsel submits a brief.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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) Form I-290B and supporting documentation; (6) the director's decision affirming the denial of the petition; and (7) the petitioner's motion to reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a Japanese Market Research Analyst, Level I. The petitioner indicated in its July 10, 1997 letter that it wished to hire the beneficiary because she possessed a bachelor's degree in American Culture. The petitioner further stated that the proffered position requires a bachelor's degree in a field that requires mastery of market research skills.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education was not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states, in part, as follows:

[T]he denial (1) failed to evaluate the usefulness (or lack thereof) of the courses she does have, and (2) failed to consider the total body of knowledge which she gained in her undergraduate program. Most importantly, the denial (3) failed to consider this body of knowledge in relation to the actual needs of her employer. . . .

The record contains the following documentation relating to the beneficiary's qualifications:

- Certification and transcript reflecting that the beneficiary graduated from a Japanese junior college (English Department);
- Beneficiary's Bachelor of Arts Degree in American Studies conferred by a U.S. institution;
- Copy of an unofficial transcript from the U.S. institution, reflecting that the beneficiary completed the following courses: "Intro Econ Analysis I"; "Crit Thinking - 3<sup>rd</sup> World"; "Dynamics of the Amer City"; and "Special Studies";
- Declaration from one of the beneficiary's U.S. professors, Dr. George J. Leonard, who states, in part, that the beneficiary was required to master a set of research, analysis, and writing techniques in his California Culture class;
- Opinion from another of the beneficiary's U.S. professors, Dr. Roger Birt, who states, in part, that the beneficiary should do well in the proffered position, "particularly if she is allowed to work in the area of intercultural or international marketing. . . ."; and
- Declaration from another of the beneficiary's U.S. professors, Raquel Rivera Pinderhughes, who states, in part, that the beneficiary satisfactorily demonstrated the following skills: reading and drawing her own conclusions and interpretations; showing how she dealt with alternative views on a historical event; referencing carefully; and writing coherently.

According to the evidence in the record, the beneficiary would perform duties that entail: researching and analyzing trends and changes in the market for transportation services among Japanese and international operations; communicating with Japanese clients; researching companies that can offer value-added services to the petitioner's current clients; designing service packages; determining potential sales and forecasting trends in Japanese and American markets; reporting findings to the petitioner's president; analyzing staffing alternatives for internet sales and research projects; responding to contingencies, complaints, and inquiries; performing Japanese translation duties; dealing with client representatives; and researching local market to help design specialized tours.

Upon review of the record, the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position, which is primarily that of a marketing manager. In its *Handbook* at page 27, the DOL describes the job of a marketing manager, in part, as follows:

Marketing managers develop the firm's detailed marketing strategy. . . . [T]hey determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets. . . . Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development . . . .

A review of the DOL's *Handbook* at page 28 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in marketing managerial jobs. A wide range of educational backgrounds is suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, most marketing management positions are filled by promoting experienced staff or related professional or technical personnel. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred. Thus, the petitioner has shown that the beneficiary's Bachelor of Arts Degree in American Studies qualifies her for the proffered position.

The director must determine whether the proffered position is a specialty occupation. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.