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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 120 51981 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 wholesaler and importer of Christmas décor and decorative home accessories that seeks to employ the beneficiary as a market research analyst. 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 denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 requests for additional evidence; (3) the petitioner's responses to the director's requests; (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 market research analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 28, 2003 letter in support of the petition; and the petitioner's responses to the director's requests for evidence. According to the letter of support, the beneficiary would perform duties that entail: gathering information; analyzing and preparing data for the marketing research needs of the company; providing support for the petitioner's sales team and strategic planning process; creating client and category-specific presentations for the advertising sales department using research sources; monitoring print and competitive advertising, as well as specific industry trends and opportunities that would support revenue growth; participating in forecasting and budgeting, which will require research, development and implementation of new strategies to enhance basic and premium growth of the product and customer retention utilizing direct mail, telemarketing and media techniques; monitoring the budget and providing input for the annual marketing budget process at the system level; examining and analyzing statistical data to forecast future marketing trends and identifying potential markets in the industry; gathering data on competitors and their methods of marketing and distribution; tracking customer growth and submitting sales and marketing reports; communicating and negotiating with vendors to ensure quality services and products; monitoring promotions through implementation and tracking procedures; and checking consumer reaction to new designs, products and services. In response to the director's requests for evidence, the petitioner stated that the beneficiary's duties would entail: establishing research methodology and designing format for data gathering, such as surveys, opinion polls, or questionnaires; examining and analyzing statistical data to forecast future marketing trends; gathering data on competitors and analyzing prices, sales, and methods of marketing and distribution; collecting data on customer preferences and buying habits; after gathering data, compiling and evaluating it and making recommendations to the president based upon her findings; and providing management with information needed to make decisions on the promotion, distribution, design and pricing of products or services. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the petitioner did not establish that a bona fide specialty occupation existed for the beneficiary to fill and that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is a specialty occupation, and that its business is of a sufficient size and complexity to require the services of a marketing research analyst. Counsel states that the director erred in determining that it did not have a sales department. Counsel asserts that the petitioner does not need to establish its past hiring practices, since it established that the position is a specialty occupation based on another criterion.

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 AAO turns first to 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.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. The director determined that the position is not a market research analyst, but a marketing manager. In addition, the director found that the position, as it would be implemented in the petitioner's organization, is not a specialty occupation.

The director stated that the petitioner used a job code of 164 on the labor condition application (LCA) that it filed with the Department of Labor. This code corresponds to advertising management occupations. The director found that if the petitioner were filing for a market research analyst, it should have used the code 050. The Department of Labor certified the labor condition application and, therefore, it is considered to be a valid document, and will be accepted, regardless of the conflicting information between the job code of 164 and the job title of market research analyst.

The director found that many of the primary duties of the proffered position parallel those in the marketing manager position description in the *Handbook*, but also found that the position description was vague, leading him to determine that there was no bona fide position for the beneficiary to fill. The AAO concurs with the director that the position description lacks the specificity required to determine that it is a specialty occupation.

The *Handbook*, at page 173, states the following with regard to the employment of marketing research analysts:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Market research analysts devise methods and procedures for obtaining the data they need. They often design telephone, mail, or Internet surveys to assess consumer preferences. Some surveys are conducted as personal interviews by going door-to-door, leading focus group discussion, or setting up booths in public places such as shopping malls. Trained interviewers, under the market research analyst's direction, usually conduct the surveys.

After compiling the data, market research analysts evaluate them and make recommendations to their client or employer based upon their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Market research analysts might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways

Because of the applicability of market research to many industries, market research analysts are employed in most industries....

The occupation of a market research analyst is a specialty occupation, normally requiring those seeking entry-level employment to have a master's degree in a related field. However, while the petitioner has identified its

position as that of a market research analyst, its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention.

At the time of filing, the petitioner offered a description of the beneficiary's market research duties, one that appeared to describe the occupation of market research analyst rather than the actual proffered position. The director found this description insufficient to establish the position as a specialty occupation and asked for further information. In response, counsel repeated much of the original information, and included language that was essentially identical to the language from the entry for market research analysts in the Department of Labor's *Dictionary of Occupational Titles (DOT)*. The director issued a second request for evidence, again asking for a detailed description of the duties to be performed. Counsel responded with essentially the same language from his response to the director's first request for evidence. He added language taken verbatim from the *Handbook* entry on market research analysts. There was no reference in either response as to how the beneficiary would perform her duties within the context of the petitioner's business.

On appeal, counsel contends that the description of duties submitted in response to the director's second request for evidence "are clearly the duties of a Marketing Research Analyst, a specialty occupation," and referenced the *Handbook's* discussion of the occupation of market research analyst. Again, the AAO notes that a position of market research analyst is generally a specialty occupation; however, a petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* or the *DOT* in discussing an occupational title, e.g., a market research analyst establishes research methodologies or performs market analyses. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

In the instant case, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing and in response to the director's requests for evidence. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). While counsel has contended that the position is a specialty occupation, and that the petitioner has a demonstrated need for a market research analyst, the duties listed in various submissions cannot substitute for a detailed description of the specific duties to be performed by the beneficiary. As previously noted, CIS must examine the actual employment of an alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. However, the petitioner's description of the duties of its position is so generic that it is not possible to identify those tasks and, therefore, whether the position is that of a market research analyst. Further, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation -- employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary's services.

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.

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.