



U.S. Citizenship
and Immigration
Services

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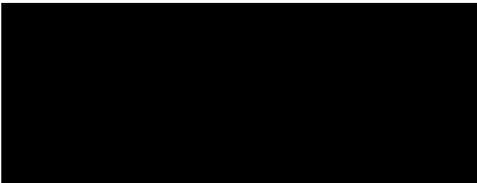


FILE: WAC 03 173 53845 Office: CALIFORNIA SERVICE CENTER Date: **MAR 31 2005**

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 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 dismissed. The petition will be denied.

The petitioner is a charter transportation company that seeks to employ the beneficiary as a market analyst. 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 because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and previously submitted evidence.

Section 214(i)(2) of 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 beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. Thus, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree can be determined by the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

The record of proceeding before the AAO contains, in part: (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 petitioner is seeking the beneficiary's services as a market analyst. The petitioner indicated that a candidate must possess a minimum of bachelor's degree in business administration, economics, marketing or equivalent or a bachelor's degree in another field and a master's degree in business administration or equivalent.

The director stated that the petitioner has submitted an evaluation of the beneficiary's education and experience by Education Evaluators International, Inc. and from an official who has authority to grant college level credit for training and for experience in the specialty at an accredited college which has a program for granting such credit. The official found the beneficiary's education and experience as the equivalent of a Bachelor of Arts in German and a Master of Business Administration degree, with a concentration in Marketing. The director found that the evaluator has not demonstrated specifically how the evaluation was made or the basis for making it. The director found that the evidence did not show that the beneficiary had the equivalent of a baccalaureate degree in a specialty occupation.

On appeal, counsel states that the beneficiary is qualified for the position because she holds the equivalent of a U.S. bachelor of science degree in German and a master's degree in business administration based on her education, training, and employment.

Upon review of the record, the AAO will withdraw the director's decision on the issue of the beneficiary's qualifications. The AAO has determined that the evidence provided establishes that the beneficiary has the equivalent of a Master's Degree in Business Administration with an emphasis on marketing. The supporting letters also demonstrate that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty as required by the statute and regulations at section 214(i)(2)(C) of the Act, 8 U.S.C. § 1184(i)(2)(C); 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The second issue in this petition is whether the proffered position is a specialty occupation. The director implicitly found that the petitioner provided evidence to support that the position of Market Analyst met the requirements to qualify as a specialty occupation. However, the AAO has determined that the proffered position is not a specialty occupation.

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 petitioner is seeking the beneficiary's services as a market analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; 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 market condition research, analysis and reporting, for application in sales and marketing development activities; establishing proper research methodologies; devising formats, methods, and procedures for gathering market information and organizational data; examining and analyzing statistical data to project market trends; analyzing domestic and international markets, especially those in Europe, for use in strategic planning and market development; utilizing evaluated data to formulate optimal sales strategies and launch targeted marketing initiatives, including managing campaigns to expand company operations; managing all marketing and sales strategies through Internet channels; overseeing website development targeted towards international audience, developing and implementing a campaign for globalization of site and company brand; analyzing data on prices, sales, and methods of marketing, and general industry conditions and fluctuations by examining both qualitative and quantitative data, including past sales and related statistical information; gathering data on competitors and their practices, potential partners and

partnership opportunities; and using analysis and evaluation of such data to devise sales and marketing campaigns as well as evaluate possible partnership strategies and cooperative agreements; presenting research findings and strategies to management in the form of presentations and reports. The petitioner stated that a candidate must possess a bachelor's or higher degree in management, business administration, or a closely related major.

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 first considers 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. Factors often considered by CIS when determining these criteria 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." See *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)).

In determining whether a 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 *Handbook* for its information about the duties and educational requirements of particular occupations.

In the instant petition, the petitioning entity stated that the duties of the proffered position parallel those of a market analyst. According to the *Handbook*, 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. The *Handbook* reports that after completing the data, market research analysts evaluate the data and make recommendations to their client or employer based on their findings. They provide a company's management with information needed to make decisions on the promotion, design and distribution of the products or services.

Based on a review of the *Handbook* and the petitioner's job description, the AAO cannot conclude that the duties of the proposed position are parallel to those performed by a market analyst. Nowhere in the record has the petitioner described with any specificity the problems that will be addressed by the market analyst. As described by the petitioner, the job description is vague and generalized. For example, the petitioner states that the beneficiary will establish proper research methodologies, devising formats, methods and procedures for gathering market information and organizational data. The petitioner also stated that the beneficiary will analyze statistical data on the potential sales of a range of services, gather data on competitors and their practices, and analyze data on prices, sales and methods of marketing. The duties as defined prohibit an

analysis of precisely what tasks the beneficiary would perform in completing those duties and the complexity or sophistication of those tasks. The duties to be performed could involve highly complex tasks that involve the theoretical and practical application of specialized knowledge or they could involve day-to-day managerial, administrative, or operational tasks routinely performed by those having less than a baccalaureate level education. The petitioner must do more than simply recite the duties from the *Handbook*. The record as it now exists does not allow CIS to make the determination that a baccalaureate in a specialty is a minimum requirement for entry into the occupation.

In addition, the *Handbook* describes in detail where market analysts are commonly employed; it states:

Market analysts held about 135,000 jobs in 2002. The industries which employ the largest number of market research analysts are management, scientific, technical consulting firms, insurance carriers, computer system design and related firms, software publishers, securities and commodities brokers, and advertising and related firms.

The *Handbook's* quoted passage does not indicate that the petitioning entity, a charter tour agency with 40 employees, would be a likely employer of a market analyst. Consequently, 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 market analyst position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted internet job postings from a wide variety of companies which include software companies, international cruise lines, education, telecommunication sales, restaurant management and financial companies.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. Some postings state that the positions require a bachelor's degree and other postings indicate that a master's degree is required. Another deficiency in the postings is that the companies are either obviously dissimilar to the petitioner or their nature is undisclosed. For example, Ernst and Young, a publicly traded company, is a provider of accounting and financial services; GOJO Industries is a maker of skin care products. Moreover, most of the advertised job descriptions are patently dissimilar to the proffered position. For instance, Novo Nordisk's posting for a market research analyst/business analyst requires ability to review and analyze IMS, Scott Levin, and Roper ASW data to address business issues; Management Resource's position requires market research experience in the pharmaceutical industry. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a specific degree. 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 stated that the duties for the proffered position include managing all marketing and sales strategies through Internet channels as well as overseeing website development targeted towards an international audience. The petitioner states the beneficiary would establish proper research methodologies, devising formats, methods and procedures for gathering market information and organizational data. However, the petitioner does not explain which research methodologies would be used or what type of market information would be gathered in reference to the type of tour business the petitioner owns. Accordingly, the AAO cannot determine the true nature of the specific duties of the proffered position and whether they are 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 therefore fails to establish the fourth criterion.

As related in the discussion above, 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.