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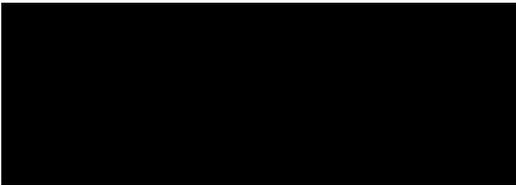


FILE: WAC 02 199 52855 Office: CALIFORNIA SERVICE CENTER Date: **MAR 31 2005**

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 engaged in the business of recruitment and placement of personnel and business consulting and seeks to employ the beneficiary as a market research 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 petitioner has failed to establish that the position is a specialty occupation. On appeal, counsel submits a brief and previously submitted 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 petitioner is seeking the beneficiary's services as a market research 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 defining and identifying for the management the type of services that it will sell in the competitive marketplace; analyzing statistical data on the potential sales of a range of services; gathering data on competitors or entities marketing similar services, and analyzing prices, sales, and methods of marketing and distribution; devising methods and procedures for obtaining data that will be used in the marketing study; designing telephone, personal or mail interview surveys to assess consumer preferences; evaluate the data gathered, and submit concrete solutions or recommendations to management on specific marketing issues; provide the company's management with information needed to make decisions on promotions, distribution, design, and pricing of the company's services; conduct opinion research on public attitudes toward specific, marketing issues. The petitioner stated that a candidate must possess a college degree in economics or business administration.

On December 16, 2002, the director requested additional information about the proffered position. The director requested a more detailed job description and explanation of the duties for this position. The petitioner stated that it would represent individuals and corporations from Southeast Asia in investment and business transactions in the United States and throughout the world. The petitioner added it would assist alien individuals in securing highly technical professional jobs in the United States. The petitioner explained that the duties of the proffered position include analyzing the data available in the United States and the world on the potential sales of these two services. The petitioner stated that one of the duties will be to determine who the competitors are. The petitioner stated that the proffered position is a staff position and will report to the president of the petitioner and the board of directors.

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 research 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 compiling the data, market research analysts evaluate them 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 research 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. Although the director requested the petitioner to provide more information about the services it provides, the petitioner stated that it first needs a market research analyst to do research to determine what type of services are needed. For example, the petitioner states that the beneficiary will analyze statistical data on the potential sales of a range of services, gather data on competitors marketing similar services, and analyze prices, sales and methods of marketing and distribution. 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 mention that the petitioning entity, which states generally that it will "represent individuals and corporations . . . in investment and business transactions ..." and "assist alien individuals professionals in securing highly professional jobs ..." 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 refers to the *Handbook* as stating that a bachelor's degree in economics or business administration is the minimum requirement for the position of market research analyst. Counsel states "this finding should serve to confirm that petitioner's competitors, being part of the same industry, must also require that individuals occupying the same or similar position in their organizations possess the same bachelor's degree in Economics or Business Administration . . ." The petitioner stated that it has no other "non-owner employees."

The director requested additional information, specifically a brief description about the nature and activities of the petitioning organization. In response to the director's second request, counsel augments the initial description of the petitioner's proposed activities by stating "the petitioner needs a technical person who could identify for the management who the potential clients are for the service it desires to provide to the general public, how these potential clients could be found, what types of services they would require, and how to attract them to employ the petitioner's services." Based on the vague and general description of the petitioner's services, this evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations.

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. On appeal counsel states that the petitioner wanted to employ a market research analyst who "will define in clear terms the market [the petitioner] will penetrate, and who shall identify the types of services that [the petitioner] will sell in a competitive marketplace." However, the petitioner does not explain which statistical data would be analyzed or what type of consumers would be targeted in reference to the type of services the petitioner will provide. 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.