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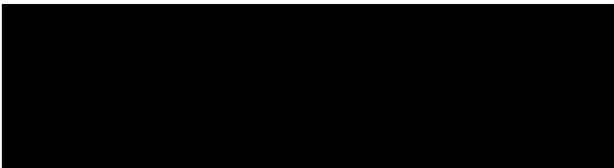
U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Rm. 3000  
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U.S. Citizenship  
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FILE: WAC 03 116 53047 Office: CALIFORNIA SERVICE CENTER Date: DEC 04 2006

IN RE: Petitioner:  
Beneficiary:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider its previous decision. The motion is granted. The prior decision of the AAO will be withdrawn. The appeal will be sustained, and the petition will be approved.

The petitioner is an insurance company seeking 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).

In its previous decision, dated August 31, 2005, the AAO dismissed the appeal and denied the petition on the basis that the petitioner had not established that the proffered position is a specialty occupation. On motion, the petitioner asserts that the evidence of record as expanded by the matters submitted on motion establishes that the beneficiary would be employed in a specialty occupation position as a market research analyst.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires the attainment of a bachelor's degree or higher in a 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.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), CIS consistently 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In its previous decision the AAO determined that the information provided by the petitioner about the proposed duties “lacks the specificity and detail necessary to support the petitioner’s contention” that the beneficiary would perform the work of a market research analyst.

On motion, the AAO honors counsel’s request for consideration of the discussion and arguments of the petitioner’s September 23, 2005 letter in support of the motion and the following additional evidence submitted upon motion: (1) the petitioner’s narrative descriptions of these “marketing research methodologies” that the beneficiary will employ: (a) Information Acceleration; (b) Strategic Choice Analysis; (c) Lead User Analysis; and (d) Key Customer Focus; and (2) a series of Internet employment advertisements that the petitioner submits to support its proposition that “most employers require a bachelor’s degree and related work experience for entry into these positions.” The petitioner contends that the evidence of record, now including the motion, satisfies at least the first and fourth criterion of the specialty occupation regulation, 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon consideration of the entire record of proceeding as now expanded by the submissions on motion, the AAO finds that the detailed information provided on motion describing the work that the beneficiary will do employing four marketing research methodologies overcomes the basis for the AAO’s previous decision, namely, the petitioner’s failure to provide sufficient information to support a finding that the beneficiary would perform the work of a market research analyst. Accordingly, the motion prevails.

The beneficiary’s educational credentials are sufficient for the proffered position. The record reflects that the beneficiary’s foreign degree is equivalent to a bachelor’s degree in business administration from an accredited

U.S. college or university; and the beneficiary's qualifications to serve in the proffered position were not an issue in the previous decisions on this 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 sustained that burden. Accordingly, the AAO's previous decision will be withdrawn, the appeal will be sustained, and the petition will be approved.

**ORDER:** The AAO's decision dated August 31, 2005 is withdrawn. The appeal is sustained. The petition is approved.