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U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship and Immigration Services

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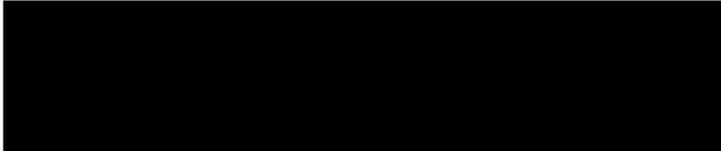


FILE: WAC 03 126 51902 Office: CALIFORNIA SERVICE CENTER Date: **SEP 18 2006**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition, dismissed a subsequent motion to reopen, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The AAO will grant the motion and reconsider its decision based upon counsel's submission. The decisions of the director and the AAO will be affirmed. The petition will be denied.

The petitioner is a loan and mortgage service company that 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 on the basis of his determination that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

The AAO, however, concluded that the proposed position does not qualify for classification as a specialty occupation. In reaching its conclusion, the AAO found the duties of the proposed position similar to those of a marketing manager, as that position is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, received at the service center on March 13, 2003; (2) the director's request for additional evidence, dated July 21, 2003; (3) the petitioner's September 26, 2003 response to the director's request; (4) the director's February 2, 2004 denial; (5) counsel's appeal of the director's decision, received at the service center on February 11, 2004; (6) the AAO's April 21, 2005 dismissal of the appeal; and (7) counsels' motion to reopen or reconsider the AAO's decision, received at the service center on May 11, 2005. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner's description of the duties of the proposed position is already contained in the record of proceeding and need not be reiterated here.

On motion, counsel requests that the AAO reopen and reconsider its April 21, 2005 decision. Counsel again contends that the petitioner's proposed position qualifies for classification as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

Counsel contends that in denying the petition, the AAO acted in a hasty and devious manner. Counsel contends that the beneficiary is a multi-faceted genius and a charismatic leader, and that the petition should be approved. Counsel asserts the following:

The petitioner feels that there is an apparent aim to railroad the decision into denying the petition, overlooking and giving minimalist focus [to] all the **complex and sophisticated elements of the proffered duties**, in the direction and evaluation of her company's business programs within the limits of trade and legal policies [emphasis in original].

As noted previously, the AAO determined that the duties of the proposed position were not those of a market research analyst, but rather those of a marketing manager, stating the following:

The AAO does not concur with counsel that the proffered position is that of a market research analyst. The petitioner has not persuasively demonstrated that the proposed duties entail the level of responsibility of a market research analyst. A review of the

Market and Survey Researcher employment information in the *Handbook*, 2004-2005 edition, finds that market research analysts are employed primarily in management, scientific, and technical consulting firms, insurance carriers, computer systems design and related firms, software publishers, securities and commodities brokers, and advertising and related firms. A review of the Advertising, Marketing, Promotions, Public Relations, and Sales Managers job descriptions in the *Handbook* finds that the job duties parallel the responsibilities of a marketing manager. No evidence in the *Handbook* indicates that the baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a marketing manager job.

Although counsel states that the petitioner disagrees with this analysis, he offers no specific analysis of his own to explain how the AAO erred in its judgment. Counsel makes no attempt to explain how the proposed position's duties differ from those of a marketing manager.

Accordingly, the AAO reaffirms its previous decision that the duties of the proposed position are in fact those of a marketing manager, and that it does not qualify for classification as a specialty occupation.

Nor does counsel address the AAO's determination that the petitioner had submitted conflicting information. In its dismissal, the AAO noted that although the petitioner stated that it had 8 full-time and 20 contractual employees, and a gross annual income of \$10,000,000, its income tax returns for 2000, 2001, and 2002 reflected incomes of \$189,297, \$252,820, and \$383,887, respectively, and that this discrepancy had not been explained. On motion, counsel makes no attempt to explain this discrepancy. Citing *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988), the AAO noted that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and that any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth in fact lies. The inconsistency remains unresolved.

For this additional reason, the petition may not be approved.

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 AAO's April 21, 2005 decision is affirmed. The petition is denied.