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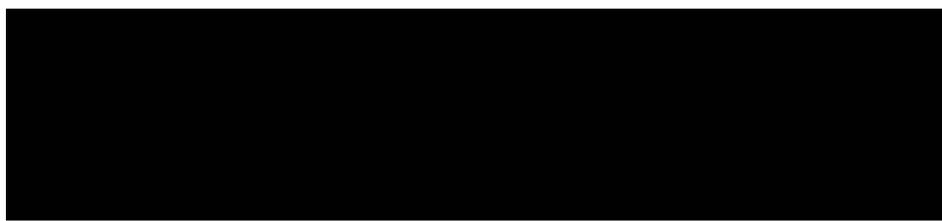
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: EAC 05 002 54047 Office: VERMONT 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, Vermont 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 provides construction, repair, and renovation services to individuals and businesses and employs seven personnel. It seeks to employ the beneficiary as a market research analyst. Accordingly, 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 record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's November 18, 2004, request for evidence (RFE); (3) counsel's February 11, 2005, response to the director's request for evidence; (3) the director's March 29, 2005, denial letter; and (4) the Form I-290B, with counsel's one-page statement and documentation previously submitted. The AAO reviewed the record in its entirety before reaching its decision.

On March 29, 2005, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. Thus the issue before the AAO is whether the petitioner has established that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary's services as an "Analyst (Market Research)." Evidence of the beneficiary's duties includes: the Form I-129; a September 29, 2004, letter of support from the petitioner; and counsel's February 11, 2005, response to the director's RFE.

At the time of filing, the petitioner stated that the beneficiary would be required to:

Analyze pricing and absorption rates and create charts and graphs. Write marketing summaries upon assessing market demand for construction, repair[,] and renovation services. Prepare reports, including charts and graphs. Presents [sic] recommendations for action plans to management. Gather, analyze, and compare competitors' data and pricing. Conduct detailed market analysis on active communities. Research competitive market and prepare pricing matrixes and graphs.

On November 18, 2004, the director requested, among other things, a description of the beneficiary's typical workweek, a detailed statement articulating the beneficiary's proposed duties and day-to-day responsibilities, and the percentage of time the beneficiary would spend performing his various duties. The director also stated: "Please note the approval of this petition is very much in question. Therefore, if you feel that you can not [sic] adequately address each of the above issues in their entirety and you would like to formally withdraw this petition, you may do so by contacting this office in writing indicating such."

In a February 11, 2005 response, counsel stated:

Please note that a typical workweek of the beneficiary will entail researching competitive market[s] and reviewing material from various sources to analyze pricing and absorption rates (7 hours); assessing market conditions and writing summaries (5 hours); preparing reports and charts (4 hours); designing surveys and questionnaires (3 hours)[;] and presenting recommendation[s] (1 hour).

Counsel also took issue with the director's comment that the ". . . approval of the petition is very much in question" and contended that the petition was well-supported by evidentiary material and the relevant statutory and regulatory provisions.

Preliminarily, the AAO determines that the director's comment in the RFE is not an indication that the director was predisposed to deny the petition without reviewing the requesting evidence. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion may deem necessary. *See* 8 C.F.R. § 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The AAO notes further that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The AAO finds that the director's comment was informational and is not an indication that the director was predisposed to deny the petition without considering the response to the RFE.

The Department of Labor's *Occupational Outlook Handbook (Handbook)* 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. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze statistical data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need. Often, they often design telephone, mail, or Internet surveys to assess consumer preferences. They conduct some surveys as personal interviews, going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys under the market research analyst's direction.

After compiling and evaluating the data, market research analysts make recommendations to their client or employer on the basis of 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 also might 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 throughout the economy....

The *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey research jobs. It does not however, indicate that the degrees held by candidates must be in a field directly related to market research as required for classification as a specialty occupation. Accordingly, the title of market research analyst does not establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Moreover, the petitioner's description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention that it is offering the position of a market research analyst.

At the time of filing, the petitioner offered a generic description of the beneficiary's market research duties, one that appeared to describe the occupation of market research analyst rather than the proffered position. The director found this description insufficient to establish the position as a specialty occupation and asked for further information, specifically requesting a description of the beneficiary's typical workweek and a detailed statement articulating the beneficiary's proposed duties and day-to-day responsibilities, and the percentage of time spent on those duties. In response, counsel provided a similarly generic description of the beneficiary's duties, only adding a percentage of time the beneficiary would spend on the various duties.

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* in discussing an occupational title, e.g., a market research analyst gathers statistical data on competitors and examines prices, sales, and methods of marketing and distribution. Neither can the petitioner establish its employment as a specialty occupation by making conclusory statements regarding the position, rather than defining the activities associated with the position, for example, describing how the beneficiary assesses the market conditions for the construction company. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A 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, the petitioner must describe the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business interests.

In the instant matter, the petitioner has not offered a description of the duties of its proffered position beyond the generalized outline it provided at the time of filing. While questioning the purpose of the director's RFE, counsel overlooked the necessity of providing a detailed description of the actual duties the beneficiary would perform on behalf of the petitioner. 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. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). 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 meets the statutory definition of a specialty occupation, that is 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 the proffered position is a specialty occupation under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO examined the six job announcements the petitioner provided to establish the petitioner's degree requirement as the norm within its industry. However, the job announcements submitted do not show that the advertising businesses are similar to the petitioner in size, number of employees, or level of business, nor can the detailed job descriptions provided by these listings be established as parallel to the nonspecific job description provided for the proffered position. Moreover, as the record does not establish the actual duties of the position as it relates to the petitioner's business, it precludes the petitioner from demonstrating that the proffered position is parallel to any degreed position within similar organizations in its industry. A review of the totality of the job announcements, the job descriptions contained therein, and the type of organizational entities advertising the positions, does not demonstrate that the proffered position is parallel to positions offered by organizations similar to the petitioner, which require a bachelor's degree in a specific specialty.

The AAO also examined the excerpt of Watson Wyatt Worldwide Data Services, 2004/2005 *Geographic Report on Professional Personnel Compensation* provided by the petitioner. Said report provides a brief description of the responsibilities of a market researcher. However, the general description does not contribute to an understanding of the duties of the proffered position as those duties relate to the petitioner's operations. The AAO also reviewed the information the petitioner submitted from various colleges describing the potential occupations available to sociology majors. The AAO notes that several colleges indicate that sociology majors may use their degree in a market research position. Again, the information provided does not address the duties of the proffered position and how the duties relate to the petitioner's business. As such, neither the report nor the information regarding potential occupations establish that the petitioner's proffered position meets any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the totality of the evidence submitted in support of the petition, 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.