

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

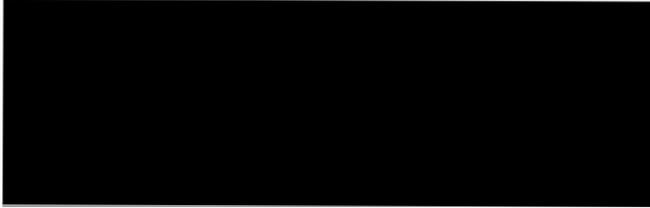
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

D/

PUBLIC COPY



FILE: EAC 04 251 52496 Office: VERMONT SERVICE CENTER

Date: **SEP 25 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 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 real estate appraisal company that seeks to employ the beneficiary as a marketing manager. 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 she found that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional 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 record of proceeding before the AAO contains: (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 AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a director of operations. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter;

and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary's responsibilities would entail performing:

- Marketing research: conducting research and competitive analysis in marketing channels and in exploring new business opportunities; examining and analyzing statistical data to forecast future marketing trends as well as assist in short and long term marketing decisions of the company; projecting and valuing revenue; forecasting growth; developing research methods to gather data on competitors, pricing and prevailing conditions; developing and analyzing business strategies (40% of time);
- Business Development: applying expertise in marketing; developing relationships with Korean speaking clients/businesses; developing and executing strategic marketing and sales initiative based on research in order to develop business opportunities; coordinating the design and production of collateral materials such as advertising and practice profiles in Korean language (40% of time);
- Database maintenance: establishing and maintaining a database of client contacts and referrals as well as ongoing marketing efforts for the purposes of forecasting and report creation (10% of time);
- Assisting Appraisers: assisting appraisers by analyzing customer data in Korean Language (10% of time).

The petitioner indicated that the proffered position requires a bachelor's degree in marketing.

The director found that the job offered did not qualify as a specialty occupation. The director found that the duties described were comparable to those carried out by sales representatives, as well as advertising, marketing, promotions, public relations and sales manager as outlined in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director noted that the *Handbook* does not indicate that these positions require a bachelor's degree in a specific specialty as a minimum requirement for entry into the field. The director found that the petitioner did not establish that the proffered position met any of the above listed criteria.

On appeal, counsel states that the duties of the proffered position closely parallel those of a market research analyst and is a specialty occupation. The petitioner submits an excerpt from the *Handbook* for market or survey researchers.

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 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.

As noted by the petitioner, market or marketing research analysts are concerned with the potential sales of a product or service. The duties describe the occupations of both market research analysts and marketing managers. With respect to the duties of market research analyst, the petitioner describes the position and its duties in exclusively generalized and generic terms that do not relate any concrete information about either the specific work that the beneficiary would do or the content and educational level of specialized knowledge that the beneficiary would apply in that work. Likewise, the market research issues that would engage the beneficiary are presented in exclusively abstract terms that do not relate to the level of theoretical and practical knowledge that would actually be applied in addressing them. For example, the petitioner has not sufficiently described the product or service to be analyzed. The petitioner has not described the research methods to be used to analyze competitors. However, 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 establishes research methodologies or performs market analyses. This type of 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, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. While the *Handbook* indicates that a market research analyst may be a specialty occupation in some instances, the duties of the proffered position are described in exclusively generalized and generic terms. Therefore, the AAO is unable to determine that the proffered position is that of a market research analyst as described in the *Handbook* requiring a degree in a specific specialty.

Most of the remaining duties of the proffered position fall under the category of a marketing manager. According to the *Handbook*, marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, marketing managers determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets. According to the *Handbook*, marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. The above description of marketing managers is similar to the proffered position in that the duties include "developing and analyzing business strategies; coordinating the design and production of collateral materials such as advertising and practice profiles in Korean language."

With respect to the educational qualifications required of marketing managers, the *Handbook* states:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. For marketing, sales

and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing.

As revealed in the *Handbook* for the occupation of marketing managers, a bachelor's degree in a specific specialty is not required for this occupation. Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed above, the market research analyst duties of the proffered position are described in exclusively generalized and generic terms and the AAO is unable to determine if a four-year degree is required for the position. On appeal, counsel contends that the record of evidence establishes the petitioner's degree requirement as the norm within its industry. Of the 12 job announcements submitted by counsel, none appear to come from businesses that are similar to the petitioner, a real estate appraisal company. Some of the advertisements indicate that a bachelor's degree is required without specifying a degree in a specific specialty. Some positions indicate that they would accept a degree in the following areas: English, business or marketing. The *Handbook* and the postings, confirm that a wide variety of degrees would be acceptable for the marketing manager duties of the proffered position. 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. Accordingly, they fail to satisfy the second criterion's condition that a petitioner establish its degree requirement is common in parallel positions among similar organizations.

Further, the AAO also concludes that the record before it does not establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. It finds no evidence in the record that would support such a finding. Accordingly, the petitioner cannot establish its position as a specialty occupation under either prong of the second criterion.

Nor is there evidence in the record to establish the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): the petitioner normally requires a degree or its equivalent for the position. The petitioner indicated that the proffered position is a newly created position. Therefore, it can provide no history of its hiring practices for similar positions.

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. To the extent they are described in the record, the duties are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty. The *Handbook* reveals that the duties of the proffered position are partially performed by a marketing manager, an occupation not requiring a bachelor's degree in a specific specialty. As noted above, the petitioner has not described the market research analyst duties of the proffered position with sufficient specificity in relation to its business to establish that a four-year degree would be required to perform those duties.

EAC 04 251 52496

Page 6

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