

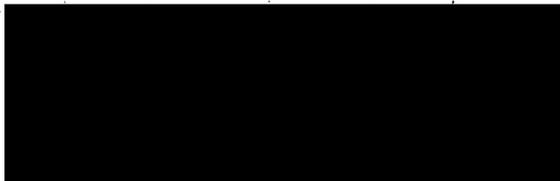
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 05 230 51543 Office: CALIFORNIA SERVICE CENTER Date: APR 25 2007

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:
[Redacted]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a manufacturer and distributor of computer monitors and accessories with 89 employees and a reported gross annual income of \$3,290,000. The petitioner is a wholly owned subsidiary of Proview International Holdings Limited with gross annual sales exceeding \$300,000,000. It seeks to employ the beneficiary as a market research analyst and endeavors to classify her 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

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

[A]n 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 are 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) the 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a market research analyst. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Research market conditions in regional, national and international areas to determine potential sales of products; analyze the trends and potentials of computer monitors and accessories wholesale industry; examine the profit opportunities within the company's market area; evaluate the market structure and customer's buying behavior as each affects product, pricing, promotion, and distribution decisions.
- Establish research method and design format for data gathering; determine and apply techniques in research design, data, collection, sampling, computer-aided data analysis and report writing.
- Examine and analyze statistical data to forecast future marketing trends; evaluate distinctive characteristics, environmental influences and emerging trends in each of the regional, national, and international markets; look at sales trends, growth potential, technical changes and any other variables that would affect the computer industry; make long term projections of the industry.
- Collect data on customer preference and buying habits; conduct customer opinion research; devise methods and procedures, including telephone, personal or email surveys to assess consumer preferences and buying habits.
- Gather information on competitors, prices, sales, and methods of marketing and distribution; gather, organize, and interpret the information collected using sources such as company records, trade journals, customers' feedback, financial reports, and financial publications.

- Analyze prices, sales and methods of marketing and distribution; examine a product's potential sales; study past statistics to predict future sales; gather data on competitors and decide how to promote, distribute, design and price products; and
- Prepare reports and graphic illustration of findings; utilize the result of analyzing the information obtained through research to prepare reports and graphic illustration of findings for review by management.

The petitioner requires a minimum of a bachelor's degree in marketing for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. Though varied, the duties of the proffered position appear to be those noted for market and survey researchers. The *Handbook* notes that market 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 data on past sales to predict future sales. They devise methods and procedures for obtaining the data they need. Like market research analysts, survey researchers design and conduct surveys for a variety of clients, such as corporations, government agencies, political candidates, and providers of various services. The surveys collect information that is used for performing research, making fiscal or policy decisions, or improving customer satisfaction. They may also conduct opinion research to determine public attitudes on various issues. The *Handbook* notes that a bachelor's degree is the minimum educational requirement for many market and survey research jobs. In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record does, however, establish that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In addition to the duties of the position set forth above and in response to the director's request for evidence, the petitioner described the duties of the position as follows in a job advertisement posted on its website:

Conduct research into worldwide and geographic market conditions for CRT and LCD monitors to determine potential sales of product. Study finance policies with view toward processing practices more attractive to wholesale customers. Establish research methodology and designs format for data gathering, such as surveys, opinion polls, or questionnaires. Examine and analyze statistical data to forecast future marketing trends. Gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Use survey results to create a marketing campaign based on regional preferences and buying habits. Prepare reports and graphic illustrations of findings. Analyze capital and finance needs of various business components emphasizing marketing budgets and mid-term planning. Prepare appropriate reports and recommendations in each field of research and study.

Other evidence of record includes company brochures, an annual report, tax returns, an organizational chart and other corporate documents. The duties to be performed by the beneficiary are specialized and complex, and the

performance of those duties requires the theoretical and practical application of a body of highly specialized knowledge. The petitioner will rely on the market research and associated duties performed by the beneficiary in determining how to market its products, pricing strategies, and in business planning. In the context of this record of proceeding, the petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of the proffered position. The director did not comment on this issue as the petition was denied on another ground. The record, however, is sufficient for the AAO to make that determination. The beneficiary holds a master's degree in business administration from California State University, Long Beach. As noted in the *Handbook*, master's degrees may be required for technical positions, and increase opportunities for advancement to more responsible positions: Advanced degrees may be earned by market and survey researchers in business administration, marketing, statistics, communications, or some closely related discipline. The degree held by the beneficiary is closely related to the requirements of the proffered position, and the beneficiary is qualified to perform those duties. 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

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.

ORDER: The appeal is sustained. The petition is approved.