

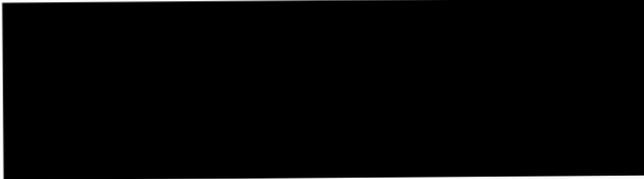
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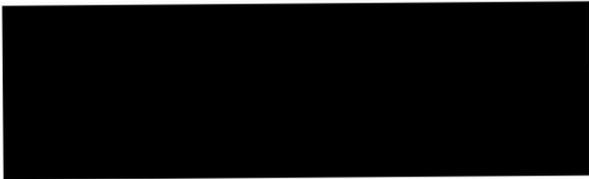


FILE: WAC 04 247 50027 Office: CALIFORNIA SERVICE CENTER Date: JAN 03 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

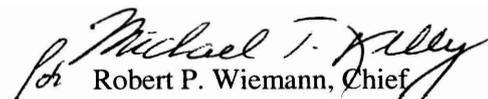
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a real estate business. It seeks to employ the beneficiary as a market research analyst and 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 on the ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In the Form I-129 and an accompanying letter the petitioner described itself as a real estate business, established in 1993, with three employees and gross annual income of \$906,261,32. The petitioner stated that it specializes in the construction and renovation of commercial units, general construction works, and interior

design, and that it planned to expand its services and facilities in the coming years to accommodate a growing clientele. To facilitate its growth, the petitioner declared, it needs the services of a market research analyst. The petitioner stated that it intends to employ the beneficiary for three years, at an annual salary of \$30,000, and described the duties of the position, and the percentage of time required by each duty, as follows:

- 20% [The beneficiary] will research the market conditions related to our industry with concentration on the different kinds of techniques and designs other companies are offering. She will establish our company's performance in relation to industry standards in the internet world. [She] will conduct the necessary researches and studies, and shall be responsible for the design and format of the tools to be used for data gathering, such as surveys, opinion polls, or questionnaires.
- 20% [The beneficiary] will examine and analyze the data gathered to forecast future market trends in the property management and real estate industry. She will also gather data about similar companies and their corresponding marketing strategies to establish a comparative-analysis study that would provide us with competitive advantage when formulating our own marketing techniques and strategies.
- 40% Database analysis and reporting duties will entail the use of internal and third party databases, and identifying the needed information and present data reports. Using externally produced market databases and directories, she will prepare market analysis reports and identify needed information to support and strengthen proposals, create initiatives and client service opportunities. She will also conduct prospect profiling to identify new areas of the general market that may be sought by the company. She will be responsible for locating and creating reports of internal information on new technologies and design.
- 10% Market research and analysis will include collecting, analyzing, and summarizing information in a format that would be helpful to the management's decision-making processes regarding marketing strategies. [The beneficiary] will collect and summarize information gathered from the internet, telephone queries, surveys, and literature to support the company's program development and marketing strategies. She will also obtain third party studies for market reference.
- 10% General marketing research and analysis duties comprised of creating presentations and spreadsheets for executive audiences. [The beneficiary] will maintain a market intelligence topics library system to keep track of any usable researches and studies. She will present efficient marketing plans and new promotional strategies. She will develop and strengthen our networks.

The petitioner indicated that the beneficiary would supervise a research assistant and an administrative assistant.

The petitioner states that the beneficiary is qualified for the proffered position by virtue of her graduation from De La Salle University in Manila, the Philippines, on January 31, 2004 with a bachelor of arts, majoring in literature, and a bachelor of science in commerce, majoring in marketing and management. According to the report of an academic credentials evaluation service in New York City, the beneficiary's education is

equivalent to a bachelor of business administration with a concentration in marketing from an accredited college or university in the United States.

In response to the RFE the petitioner submitted an organizational chart, which identifies eight employment positions (two of which are listed as vacant), places the market research position on the same hierarchical plane as the positions of "accounting/finance" and "management/operations," and describes the job duties briefly as follows: "Will be handling analysis of company's target market, develop print and sales collateral info and present relevant information to maximize profit." The petitioner also submitted some tax filings (which list the company's total assets at \$2,661,277 in 2003), photographs of the business premises, and other documentation.

In his decision the director determined that the duties of the proffered position were more reflective of a marketing manager position, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, than a market research analyst. The director quoted language in the *Handbook* indicating that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a marketing manager position. Based on the evidence of record, the director concluded that the proffered position did not meet any of the alternative criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation.

On appeal the petitioner reiterates its contention that the beneficiary will be performing the duties of a market research analyst, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. After repeating the description of duties originally provided in its initial letter to the service center, the petitioner provides the following additional information about the job duties:

[The beneficiary] will make sure that the company can maintain profitability. She will be making sure that the cost and benefit analysis are accurate which is essential for the success and profitability of a company.

[The beneficiary] will calculate and perform break even and profit analysis. She will also use regression analysis techniques to predict future trends and price fluctuations in food, labor and energy costs. She will utilize matrix mathematics techniques to plan labor schedules and derive best use of labor/inventory mix in production.

[The beneficiary] will also take charge of cash controls and cash management techniques. She will be in charge of cost analysis and financial statement analysis. She will be aware of cost/risk analysis and risk management techniques to minimize exposure. She will also review state and federal laws regarding minimum wage, worker compensation, labor reporting and labor regulations.

Lastly, [the beneficiary] will be responsible with [regard to] the psychology of personnel and the effects of proper personnel management. She will be sensitive to the employee needs and the proper way to discipline employees to be able to mold them into the company goals, standards and culture of the company.

In conclusion, the petitioner states that "[t]he employment of a market research analyst materializes the maximization and creation of a more competent and expedient process of marketing management."

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The occupation of market research analyst is described as follows in the *Handbook*, 2006-07 edition, at 175:

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 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 also may 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 might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

With respect to the instant petition, though some of the job duties described by the petitioner may fall outside the realm of market research analysis, the bulk of the duties accord with the *Handbook's* description of a market research analyst. Accordingly, the AAO is persuaded that the beneficiary would be performing the duties of a market research analyst in the proffered position.

The *Handbook* states the following in regard to the educational requirements for market research analysts:

A bachelor's degree is the minimum educational requirement for many market . . . research jobs. However, a master's degree may be required, especially for technical positions Market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline.

Id. at 176. Based on the foregoing information, the AAO concludes that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a market research analyst position.

Though master's degrees in certain specialty fields may be necessary for some positions, baccalaureate degrees in a variety of disciplines may be sufficient for entry into many other positions. Accordingly, market research analysts do not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes a series of internet job announcements for market research analysts. With one exception, the advertisements state that the educational requirement for the job is a bachelor's degree without identifying any specific specialty, which accords with the information in the *Handbook* that market research analysts do not require a baccalaureate degree in any particular field. One advertisement requires that applicants have a bachelor's degree in business, market research, or behavioral science, but it is for a different kind of position – a manager of market research who “leads a team of senior researchers” – which distinguishes it from the market research analyst at issue in this petition with no such managerial component. Moreover, only one of the advertising companies is in the same line of business as the petitioner, and the advertisements do not show that any of the companies are similar to the petitioner in their size and scale of operations. Thus, the job advertisements do not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the evidence of record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. The record does not show that the job is unique, or that it involves a level of complexity beyond that normally performed by a market research analyst such that it can only be performed by an individual with a degree in a specific specialty. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a baccalaureate or higher degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the evidence of record does not show that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. The petitioner's description of the proffered position's duties is mostly generic language that provides few details about the specific types of statistical data to be gathered and how the research is to be conducted. The record does not demonstrate a complexity or specialization in the job duties that is usually associated with baccalaureate level knowledge in a specific field of study. Accordingly, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the position proffered by the petitioner does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.