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U.S. Citizenship  
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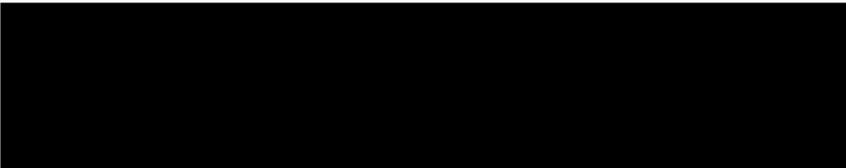


FILE: WAC 05 131 51231 Office: CALIFORNIA SERVICE CENTER Date: **JUL 31 2007**

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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*for* *Michael T. Kelley*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The 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 wholesaler of T-shirts and related products that seeks to employ the beneficiary as a business 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 proposed position qualifies for classification as a specialty occupation.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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 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 proposed position.

As noted previously, the petitioner is a manufacturer and wholesaler of T-shirts and related products. It has 3,500 employees and gross sales of \$192 million, and operates 133 retail stores.<sup>1</sup> According to the petitioner’s August 25, 2005 response to the director’s request for additional evidence, the beneficiary would conduct research to evaluate the petitioner’s market potential in Brazil; compile data and analyze weekly sales from the petitioner’s existing retail outlets to prepare reports to be used in developing promotional campaigns targeted at Brazilian retailers who purchase the petitioner’s products; research style trends in the United States and Brazil by reviewing the company’s current line of apparel and determining what types of customers and demographics the company should target in Brazil and the rest of South America; review fashion publications; attend trade shows; meet with retailers and competitors; analyze past statistics to forecast which garments would be most likely accepted by the target market; travel to Brazil to gather, compile, and analyze data from the petitioner’s competitors in order to anticipate trends in the market; study competitors’ strategies and merchandise in order to compete with them in quality and price; develop methods for data collection and tracking; create specialized surveys for the apparel industry; conduct surveys with current retailers and prospective retailers in Brazil; analyze the data she has collected to prepare and present reports to the petitioner’s management; and analyze and prepare strategies to establish the petitioner’s presence in Brazil. The petitioner has provided additional details regarding these duties on appeal.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In denying the petitioner, the director found the duties of the proposed position similar to those of a marketing manager, an occupation that is not typically considered a specialty occupation.

In determining whether a proposed 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. The AAO routinely consults the Department of Labor’s (DOL) *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The AAO acknowledges that marketing managers typically perform some of the proposed duties of this position. However, in reaching its conclusion regarding the nature of the proposed position, the AAO has reviewed the discussion of market or marketing research analysts at page 175 of the 2006-2007 edition of the *Handbook*, and has taken particular note of the following section of that discussion:

[M]arket research analysts devise methods and procedures for obtaining the data they need. They often design telephone, mail, or Internet surveys to assess consumer preferences. Some surveys are conducted as personal interviews by going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping

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<sup>1</sup> Although these figures have not been verified, they are consistent with other information contained in the record, as well as with information about the petitioner’s business operations and expansion widely available online.

malls. Trained interviewers, under the market research analyst's direction, usually conduct the surveys.

After compiling the data, market research analysts evaluate them and make recommendations to their client or employer based upon 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 might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

The AAO finds that it is market research analysts' work in the design and analysis of original market research that sets this occupation apart from what might otherwise be characterized as marketing or sales manager positions, employment that also requires the incumbents to perform marketing research as they seek to identify and expand business opportunities for their employers. The AAO concludes that the record of proceeding establishes that such functions are in fact encompassed within the duties proposed by the petitioner. While the AAO acknowledges that market research analysts typically are not employed by the companies who need their services, but rather work for market research companies who contract their services to various companies for defined periods of time, it finds that, in this case, the petitioner has submitted sufficiently detailed and extensive information regarding its business operations and aggressive plans for expansion to establish that it would in fact employ the beneficiary as a market research analyst.

The proposed position therefore qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that the nature of the specific duties of the proposed position 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. The AAO finds that, in this particular record of proceeding, such a demonstration has been made.

According to an evaluation contained in the record of proceeding, the beneficiary possesses the equivalent of a bachelor's degree in fashion merchandising from a regionally accredited college or university in the United States. The beneficiary therefore qualifies to perform the duties of this specialty occupation.

The petitioner has established that the proposed position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained and the petition 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 sustained that burden.

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