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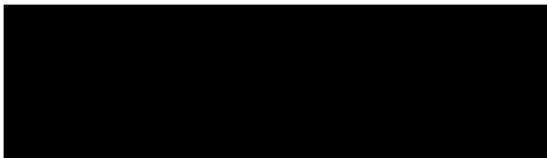
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
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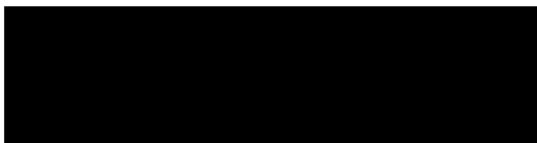


FILE: EAC 05 221 52198 Office: VERMONT SERVICE CENTER Date: JUN 04 2007

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.

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 dismissed. The petition will be denied.

The petitioner is a wholesaler and retailer of jewelry, and a wholly owned subsidiary of Vaibhav Gems, Ltd. It was formed to market the products of its parent company in the United States, Mexico, Virgin Islands and other locations. It seeks to employ the beneficiary as a market research analyst and endeavors to classify him 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 Immigration and Nationality Act (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 supporting documentation. 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:

- Perform marketing and sales activities as well as research and development affairs in connection with new business avenues for retail and wholesale sales business;
- Perform market research, web based research, analysis and forecasting, price comparisons, preparation of project bid proposals, and provide pre-sales evaluation and support;
- Identify international and domestic business opportunities and locate strategic partners in co-developing markets for the petitioner;
- Assist in the coordination and implementation of new and innovative marketing strategies aimed at domestic and international clientele, as well as general activities to ensure that aim, goals or objectives specified for particular markets are accomplished in accordance with prescribed priorities, time limitations and funding conditions;
- Coordinate activities concerned with research and development of new concepts, ideas, basic data, and products;
- Develop strategic marketing programs for such products; and
- Act as liaison with business clients and with the production department regarding the design, development and implementation of customized software application technologies.

The petitioner requires a minimum of a bachelor's degree in business administration, management or a related field for entry into the proffered position.

The duties of the proffered position are varied and not those normally performed by market research analysts as stated by the petitioner. According to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 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 conduct opinion research to determine public attitudes on various issues; the research results may help political or business leaders and others assess public support for electoral prospects or social policies. The duties to be performed by the beneficiary involve market research, but are not the type of duties performed by market research analysts whose primary responsibilities involve pure market research. According to the petitioner, the beneficiary will perform market research, but it is research that is normally performed by marketing managers in performing the duties of their positions. For example, the beneficiary will perform marketing and sales activities in connection with new business development. He will also coordinate and implement new marketing strategies in promoting his employer's products, perform general activities to ensure that corporate objectives are met, and coordinate activities concerned with research and development. These are not duties normally performed by market research analysts.

As described by the petitioner, the duties to be performed by the beneficiary include many of the duties of advertising, marketing, promotions, public relations, and sales managers. These positions do not generally qualify as specialty occupations because they do not require a bachelor's degree in a specific specialty. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The evidence of record does not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations and in support of that assertion submits several job advertisements for marketing and sales related positions. Those advertisements, however, do not establish that a degree in a specific specialty is common in the industry for the position. Some of the advertisements submitted were sales related and

required only an associate degree. Others noted that a college degree was required, but did not require the degree to be in any specific field of study. The advertisements are consistent with the educational requirements noted in the *Handbook* for these positions, that a degree in a specific field of study is not required. The petitioner has not established the referenced first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for entry into the proffered position, and offers no evidence in this regard. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The evidence of record does not establish that the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor does the record establish that the duties of the position are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The duties are described in general terms and the complexity or uniqueness of the duties cannot be ascertained without a detailed description of the actual tasks to be performed. For example, the petitioner states that the beneficiary would:

- Perform marketing and sales activities as well as research and development affairs in connection with new business avenues for retail and wholesale sales business - The petitioner does not describe in detail precisely what marketing and sales activities will be performed by the beneficiary, or the nature of any research and development activities that will be undertaken. Without a precise description of what will actually be done by the beneficiary related to these stated duties, it is not possible to evaluate the complexity or uniqueness of the tasks to be performed.
- Perform market research, web based research, analysis and forecasting, prepare pre-sales evaluation and support - The petitioner does not describe in detail precisely what tasks will be performed in performing market research or web based research (the nature and extent of research to be performed). Nor does the petitioner detail the tasks to be performed in analyzing and forecasting (what data will be analyzed and from what source – what will be forecast). Without a precise description of what will actually be done by the beneficiary related to these stated duties, it is not possible to evaluate the complexity or uniqueness of the tasks to be performed. and
- Assist in the coordination and implementation of new and innovative marketing strategies - The record does not specifically detail what tasks will be performed in coordinating and implementing new and innovative marketing strategies. It is unknown what the beneficiary will actually do in performing this stated duty. Thus, it is not possible to determine how complex or unique the tasks would be.

The petitioner makes reference to the *Dictionary of Occupational Titles* SVP rating for market research analyst to establish the offered position as a specialty occupation. That reference will not establish the position as a specialty occupation because, as previously stated, the proffered position is not that of a market research analyst. Further, an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a

position would require. The petitioner has failed to satisfy either the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 failed to sustain that burden and the petition shall accordingly be denied.

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