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U.S. Citizenship and Immigration Services
Department of Homeland Security

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AUG 19 2003

FILE: WAC 03 264 50459 Office: CALIFORNIA SERVICE CENTER Date:

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, Director
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 restaurant and seeks to employ the beneficiary as a market research analyst. The petitioner 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief stating that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the offered 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. The AAO reviewed the record in its entirety before issuing its decision.

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

- Establish research methodology and design formats for data gathering such as surveys, opinion polls, and/or questionnaires;
- Gather information on competitors, prices, sales, and methods of soliciting business in the local and regional area for the purpose of [] [sic].
- Conduct personal interviews with prospective customers or prospective business partners in order to gather personal preferences of servicing and forms of business approaches and procedures to be employed in its operations;
- Conduct “all other sorts of market analysis and researches” in order to assist management in its expansion program;
- Examine and analyze statistical data to forecast future marketing and sales trends;
- Gather data on competitors and analyze costs, manner of billings and closing accounts;
- Prepare reports and graphic illustrations or other forms of media illustrations and presentations on findings acquired from the performance of the above duties and submit same to management; and
- Assist the president and other officers in business calls or meetings in regard to additional and potential business for the company or in regards to expansion programs of the company.

The petitioner requires a minimum of a bachelor’s degree in business administration, within any field of concentration, for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish 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. The duties of the proffered position are presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would: establish research methodology and design formats for data gathering such as surveys, opinion polls, and/or questionnaires (the record does not indicate the purpose of any such data or what type of data is to be gathered); conduct "all sorts" of market analysis and research to assist management in its expansion program (the record is silent as to what type of market analysis and research is meant by "all sorts" and does not contain any documentation or business plan to establish the nature and/or scope of any expansion program); and examine and analyze statistical data to forecast future marketing and sales trends (the record does not establish what type of statistical data will be analyzed to forecast future marketing and sales trends or how those statistics will be obtained).

While the petitioner has identified its position as that of a market research analyst, its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention. 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 in the *Handbook* in discussing an occupational title, e.g., they analyze statistical data to forecast future marketing and sales trends, or they establish research methodology and design formats for data gathering such as surveys, opinion polls, and/or questionnaires. 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.

In the instant case, the petitioner has offered no specific description of the marketing research analyst duties beyond the generalized terms describing the position in the *Handbook*. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). As previously noted, CIS must examine the actual employment of the alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. The petitioner's description of the marketing research analyst duties, however, is so generic that it is not possible to identify those tasks and, therefore, whether the position is that of a marketing research analyst. Further, without a specific description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation – employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary's services.

It is additionally noted that the petitioner required a bachelor of business administration degree without any specific area of concentration. For a position to qualify as a specialty occupation, there must be a close corollary between required specialized studies and the position offered. A degree of generalized title, such as business administration, without further specification, would not qualify the beneficiary to perform the duties

of a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Nor would a position that required a degree of generalized study qualify as a specialty occupation. Thus, the petitioner cannot establish that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. For a position to qualify as a specialty occupation, there must be a close corollary between the required specialized studies and the position offered. As previously noted, a degree of generalized title, such as business administration, without further specification, would not qualify the beneficiary to perform the duties of a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Nor would a position that required a degree of generalized study qualify as a specialty occupation. A degree in business administration may be sufficient if the academic course pursued and the knowledge gained are realistic prerequisites to a particular occupation and the individual seeks to work within that occupation. *Matter of Ling*, 13 I&N 35 (Reg. Comm. 1968). Essentially, this means that if the beneficiary is seeking, for example, recognition as an accountant, his academic courses should be predominantly in that area rather than in the general field of business administration. The credentials evaluation indicates that the beneficiary has the equivalent of a Bachelor of Science degree in business administration without concentration in any specific area of study. The beneficiary's degree in business administration will not, therefore, qualify him to perform the duties of a specialty occupation. For this additional reason, the petition must be denied.

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

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 appeal shall accordingly be dismissed.

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