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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



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invasion of personal privacy

File: EAC 00 027 53707 Office Vermont Service Center Date: DEC 08 2002

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)

IN BEHALF OF PETITIONER: [Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner provides services such as paramedical exams, EKG's, blood draws, substance abuse collection and alcohol testing and examinations. The firm employs six persons and has a gross annual income of over \$750,000. It seeks to employ the beneficiary as a market research analyst for a period of three years. The director determined that the petitioner had not established that the offered position is a specialty occupation.

On appeal, the petitioner submits a statement.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

'an 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.

The director denied the petition because it did not appear that the firm would require the services of a professional market research analyst. The director also noted that the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook) stated that a market research analyst position is a professional position requiring a graduate degree. On appeal, the petitioner states that the offered position is a specialty occupation since it requires the services of a professional. The petitioner further states that a bachelor's degree is required for entry into the occupation and requests that the director's decision be re-evaluated.

The petitioner's argument on appeal is not persuasive. The Service does not rely solely on the title of a position in determining whether that position qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

In this responsible position, beneficiary will conduct extensive and complex market research analysis in order to expand the company's market share and to assist management in achieving short term and long term objectives.

She will work within the company's strategic plan to define forecasts; research and evaluate lists for identifying prospective market segments; conduct feasibility studies of alternative programs and recommend appropriate strategies to increase business.

She will assist in establishing market research methodology and design formats for gathering data including questionnaires, opinion polls and surveys. Ms. [REDACTED] will carefully analyze the market's potential and collect data on preferences and analyze and gather opinions regarding our present services

She will assist in preparing our marketing strategies and based on her analysis she will prepare reports to refine and augment our present approaches. Ms. [REDACTED] will analyze our present position and evaluate current trends.

Ms. [REDACTED] will also gather data on competitor services and marketing strategies in an effort to uncover new marketing niches for the company and establish factors to augment services. Ms. [REDACTED] will examine and analyze statistical data to forecast future market trends and conditions and determine how they affect our business. She will also prepare reports and graphic illustration of findings.

More specifically, beneficiary will engage in conducting market research studies; she will extensively utilize computers and software to research market variables. She will establish methodology and design formats for data gathering including surveys, opinion polls and questionnaires. She will recommend changes in business plans to management based on her studies and also suggest marketing strategy. Ms. [REDACTED] will also consult with industry leaders and advise management of the latest trends to enable management to make sound business decisions.

She will utilize her educational background, experience and knowledge of the field to prepare promotional materials as part of her marketing research duties and conduct target and segment marketing.

The duties described, while quite detailed, are not the responsibilities of a market research analyst as set forth in the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition. Therefore, the Service is not persuaded to classify the position as the specialty occupation of a market research analyst.

The first reason why the Service is not persuaded to classify the offered position as a market research analyst position concerns the particular duties of the offered position compared with the duties of a typical market research analyst position. At page 148 of the Handbook, the DOL states that "[m]arket research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales." The duties described by the petitioner are not related to the analysis of any type of sales. Rather, the position being offered involves broad duties such as "will carefully analyze the market's potential and collect data on preferences and analyze and gather opinions regarding our present services."

The second reason why the Service is not persuaded to classify the offered position as a market research analyst position relates to the type of industry in which the beneficiary would be employed. Information in the Handbook, at page 149, provides insight into the types of industries in which market research analysts are normally found. According to the DOL:

Private industry provided about 4 out of 5 jobs for salaried workers, particularly economic and marketing research firms, managements consulting firms, banks, securities and commodities brokers, and computer and data processing companies.

Although the list of private industry employers is not all inclusive, the DOL's description of a market research analyst's job implies that these types of positions are found within large firms or corporations, such as banks or marketing research firms.

The record indicates that the petitioner, which is engaged in providing paramedical exams, EKG's, blood draws, substance abuse collection and alcohol testing and examinations, employs approximately six persons and has a gross annual income of over \$750,000. The business of medical services in which the petitioner is engaged, is not within the DOL's list of industries that typically require the services of a full-time individual who performs only market research analyst duties. For these reasons, the Service is not persuaded to label the offered position as a market research analyst position.

Although the Service does not agree with the petitioner that the position it is offering is a market research analyst position, the petitioner could, nevertheless, qualify the offered position as a specialty occupation if the petitioner could establish that:

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.

8 C.F.R. 214.2(h)(4)(iii)(A).

An analysis of the beneficiary's proposed duties reveals that the job being offered is the job of a marketing manager or a market research manager. According to DOL at page 25 of the Handbook:

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including *product development managers* and *market research managers*, they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets . . . Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development.

The beneficiary's proposed job duties, which include preparing marketing strategies and engaging in conducting market research studies, parallel the job responsibilities of a marketing manager or market research manager. Information at page 25 of the Handbook does not indicate that either position requires a bachelor's degree in a specific field of study. Rather, most employers prefer a wide-range of educational backgrounds or promote individuals from within companies. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Additionally, the petitioner has not provided any evidence that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. Furthermore, the petitioner has not presented any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross

annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties 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 petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding for the position of a market research manager or marketing manager. Therefore, the director's decision is affirmed.

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 not sustained that burden.

ORDER: The appeal is dismissed.