



U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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ULLB, 3rd Floor  
Washington, D.C. 20536



**PUBLIC COPY**

File: WAC-99-257-54345 Office: California Service Center

Date: FEB 21 2001

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)

IN BEHALF OF PETITIONER:



Identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**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, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is an international trade business with six U.S. employees, three foreign employees, and \$1.3 million gross annual income. It seeks to employ the beneficiary as a project assistant manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner's president argues that the proffered position is a specialty occupation and the beneficiary is qualified to perform the duties of 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 nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary holds a diploma from the Moscow State Institute of International Relations of the Ministry of Foreign Affairs of the USSR, and a master of science degree in international management conferred by a U.S. institution. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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.

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.

The duties of the proffered position are described in pertinent part as follows:

- \* Developing current and new projects in Russian [sic] and Mongolia;
- \* Conducting sales analysis and projections;
- \* Preparing promotional literature;
- \* Preparing periodic income reports showing current and projected revenue;
- \* Compiling data on competitors, import/export agents, and analyzing prices, products, and services;
- \* Analyzing revenue statistics in order to formulate policy and increase quality of company services;
- \* Reviewing market analyses to determine customer needs, volume potential, price schedules, and discount rates;
- \* Creating and drafting proposals, work plans, and budgets;
- \* Negotiating and executing international import/export contracts involving knowledge of international law and business with foreign partners and shipping agents;

- \* Coordinating projects with international customers, utilizing comprehensive knowledge of international business practices, particularly relating to Russia and Mongolia;
- \* Making bids and quoting prices for technical project contracts; and
- \* Representing the company at trade association meetings to promote the company's services.

The petitioner's president and an expert from The International School of Management assert in part that the proffered position is a specialty occupation because it requires both the minimum of a bachelor's degree and because market analysis will comprise the majority of the beneficiary's time in the proffered position.

The petitioner has submitted a letter from an expert from The International School of Management who states in part that:

...[T]he Project Assistant Manager position for an international import/export firm requires the minimum of a B.S. or B.A. Degree in Business, Management, International Management, or a related field. This position necessarily entails utilization of a broad array of market analysis and econometric methodologies. The complexity of the Project Assistant Manager position within the context of international trade requires an individual with comprehensive training in these areas.

It is standard within the international trade industry for an individual in such a position to have a minimum of a Bachelor's Degree in international business or management. The complexity of the job's responsibilities combined with the immense amount of technical information necessary to carry out the position require training that can only be provided by baccalaureate study or extensive professional experience in the field. Such technical and other information encompasses complex areas including statistics, economic analysis, market dynamics, international business law and customs, and consumer behavior.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to combine the duties of a market research analyst with those of a marketing manager. The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 149 finds that graduate training in economics, business administration, marketing, statistics, or some closely related discipline is required for many private sector marketing research analyst jobs.

It is noted that the Handbook at page 26 also finds that not all marketing manager positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such a complexity as to require at least a baccalaureate degree in a specialized and related area. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

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. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.