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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-00-027-53055 Office: Vermont Service Center Date:

JUL 6 2001

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

Identifying 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 dismissed.

The petitioner is an importer and exporter of electronic goods with two employees and a projected gross annual income of \$660,000. 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, counsel submits a brief.

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 petitioner's business would require the services of a professional market research analyst. On appeal, counsel states that the size of the company is unrelated to the need for professional services. Counsel further states that the proffered position further requires the beneficiary to maintain overall responsibility for developing and implementing complete and integrated marketing programs and strategies to ensure increasing sales and profit.

Counsel'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:

- * Participate in the development and supervise the implementation of marketing strategies and programs to achieve the profit objectives.
- * He will develop and implement complete and integrated marketing programs and strategies to ensure increasing sales, profitability and market share for all.

* He will devise as well as supervise the development of marketing plans, graphs, charts etc. that will leverage current product strengths.

* He will collaborate with other departments to integrate improves [sic] and/or new products in to marketing strategies.

* To assess and evaluate the management of all product objectives and identify potential problems and opportunities and make recommendations for appropriate course of action.

* To monitor the performance as well as gain the public opinion on order [sic] to make recommendations for justifiable deletion of the products.

* To consult and collaborate and ensure all the market strategies comply with all regulatory agencies.

* To evaluate all marketing programs against established performance objectives.

* To evaluate the success of marketing and sales programs with division management and recommend adjustment and changes to achieve desired results.

* Using market research methods, to review and evaluate competitive products and apparent market strategies.

While the duties described above appear to involve some analysis of the sale of the petitioner's goods, the Service is not persuaded to classify the offered position as a market research analyst position in part because of the type of industry in which the beneficiary would be employed. Information in the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, 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 worldwide pharmaceutical companies.

The record indicates that the petitioner, which is engaged in the import and export of electronic goods, employs two persons and has a projected gross annual income of \$600,000. The business of importing and exporting electronic products 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 this reason, 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.

See. 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 firms'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 developing and implementing complete and integrated marketing programs and strategies, 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. It is noted that the record contains a letter dated February 4, 2000, from a business dealing in used office products that states in part that a baccalaureate or higher degree is "probably" the minimum requirement for its market research analyst position. The record also contains a second letter, undated, from an office equipment business that states in part that its market research analyst position requires a minimum of a bachelor's degree. Such letters are insufficient evidence of an industry standard. The writers have not specified a field of study for the baccalaureate degree that is required for their market research analyst positions or provided evidence in support of their assertions. 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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.