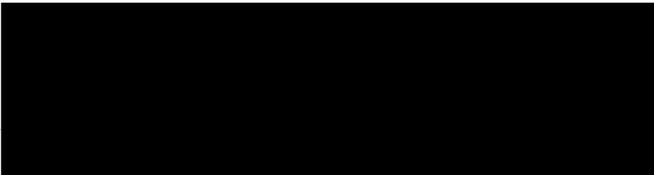




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U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

File: EAC 00 045 52229 Office: Vermont Service Center Date: JUL 17 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]

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

Robert P. Wiemann, Acting 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 director's decision will be withdrawn and the matter remanded to him for further action and consideration.

The petitioner is a software/hardware consulting firm with eight employees and an approximate gross annual income of \$1 million. It seeks to employ the beneficiary as a marketing 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 states that the number of employees at the firm has grown from eight to seventeen persons. Counsel further states that the director's decision is contrary to statute, regulations and precedent decisions as it is long-settled law that a market research analyst is a specialty occupation and the director conceded this in his denial decision.

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 the duties of the offered position as described by the petitioner did not appear to be the duties of a market research analyst. On appeal, counsel states that the position of market research analyst clearly qualifies as a specialty occupation. Counsel's argument on appeal is persuasive. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Research economic trends in hardware and software market in the context of the employer's business and capabilities. Research market conditions in the United States and international to determine potential sales of employer's products. Analyze marketing conditions in the local and international areas. Analyze process and methods of marketing. Develop research methods to gather data on computers, pricing and prevailing conditions. Examine and analyze statistical data to forecast future marketing trends. Assist in short and long term marketing

decisions of company. Analyze research results and prepare to management. Approximately 70-80% of the day-to-day work will be devoted to research and analysis.

The duties listed above are primarily those of a market research analyst. The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 148-150 indicates that the usual duties of a market research analyst encompass those listed above.

Nevertheless, the petition may not be approved at this time. The matter is remanded to the director for him to determine if the beneficiary qualifies to perform services in the specialty occupation of market research analyst.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision.