



U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

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



D2

JUL 20 2001

JUL 20 2001

File: EAC 00 028 51024 Office: Vermont 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)

IN BEHALF OF PETITIONER



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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 appeal will be dismissed.

The petitioner employs 15 persons and has a gross annual income of \$12 million. It seeks to employ the beneficiary as a market analyst for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation or that the beneficiary qualifies to perform the duties of the offered position.

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 the duties of the offered position as described by the petitioner did not appear to qualify as a specialty occupation. On appeal, counsel states that the described position 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:

1. Design, promote, price and distribute travel and travel related services;
2. Generate, define and evaluate marketing options for various airlines;
3. Devise methods and procedures for collecting data regarding airfares, cruises, etc;
4. Code, tabulate and evaluate data for the above;
5. Make recommendations to management based on findings and suggest course of actions.

In these proceedings, the duties of the position are dispositive and not the job title. 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.

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.

The next issue to be examined in this proceedings is whether the beneficiary is qualified to perform the services of a specialty occupation which is the position of a market research analyst.

On appeal, counsel notes that the beneficiary obtained his Bachelor of Commerce from the University of Delhi and has approximately five years of work experience in the marketing field. Counsel argues that the beneficiary's experience and education is equivalent to a Bachelor of Business Management degree with a major in marketing from an accredited university in the United States. Counsel argues that the beneficiary clearly qualifies for the position on the basis of his education and employment experience.

The beneficiary attained a Bachelor of Commerce degree from the University of Delhi in 1994. Completion of this course of study is found to be analogous to the completion of three years of academic studies leading to a Bachelor of Business Administration degree from an accredited institution of higher education in the United States. The record indicates that in addition to university-level studies, the beneficiary has attained approximately five years of work experience in various fields of business. An evaluation of education, training, and employment experience provided by the petitioner finds his credentials to be the equivalent to a "Bachelor of Business Management degree, major in Marketing" from an accredited institution of higher education in the United States.

At page 149 of the Handbook, the DOL states the following about the level of training required for market research analysts:

Graduate training is required for many private sector economist and marketing research analyst jobs...A bachelor's degree with a major in economics or marketing may not be sufficient to obtain some positions as an economist or marketing analyst, but is excellent preparation for many entry-level positions....

In the instant case, the beneficiary is seeking employment as a market research analyst in the private sector and has a bachelor's degree in commerce and the equivalent of a business management degree with a major concentration in marketing. The beneficiary does not hold a master's degree, which the DOL indicates is generally the minimum requirement for a market research analyst job in the private sector.

The petitioner has not persuasively established that the offered position can be classified other than as a market research analyst, or that the minimum requirement for the position that the petitioner is offering is a bachelor's degree in commerce or business management with a major in marketing. Accordingly, the decision of the director will 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 not sustained that burden.

ORDER: The appeal is dismissed.