

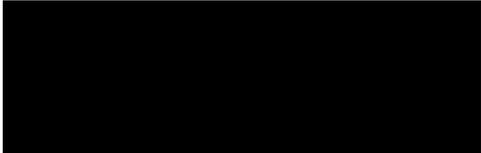


DA

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

MAY 2 2001

File: WAC 99 180 51777 Office: California 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:



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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner provides marketing consulting and services and employs 9 persons and has an approximate gross annual income of \$3 million. 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 beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a statement in response to the director's denial.

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

On appeal, counsel states that the evaluation of the beneficiary's credentials submitted for the record finding the beneficiary has attained the equivalent of a bachelor's degree in marketing should be accepted by the Service. Counsel argues that the petitioner has met its burden of proving the beneficiary's eligibility to perform the services in the specialty occupation.

The record contains an educational and professional experience evaluation report that indicates the beneficiary received the equivalent of a baccalaureate degree in business administration

with a major in marketing. The duties of the offered position are described as follows:

The company seeks to hire Mr. [REDACTED] in the capacity of Market Research Analyst to assist in the growth and development of new markets, promotional programs and new product development. Mr. [REDACTED] duties will include researching market conditions to determine potential sales of company services, including establishing research methodology and designing format for data gathering; examining and analyzing statistical data to forecast future advertising trends; gathering data on competitors and analyzing prices, sales and methods of marketing and client development; advising management in the development and implementation of marketing plans and strategies.

The duties described are the responsibilities of a market research analyst. According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 148, a market research analyst is concerned with the potential sales of a product or service, and he or she analyzes data and information to predict future sales. Therefore, as the job meets the requirements of the specialty occupation of a market research analyst, the beneficiary's educational and employment experience must meet the minimum requirements for a market research analyst.

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 attained the equivalent of a bachelor's degree in business administration with a major 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 business administration 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.