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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

MAY 2 2001

File: WAC 99 179 51544 Office: California Service Center Date:

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]

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 is a marketing firm specializing in clothing apparel. At the time of filing, the company employed one person and had not attained any gross or net annual income. The beneficiary (as president of the company) is petitioning for himself to come to work for the company as its market research coordinator for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in the offered position.

On appeal, counsel submits a brief.

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 coordinator.

On appeal, counsel states that the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) does not state that graduate training is an absolute requirement for the offered position, but rather it is required for most (not all) jobs. Counsel further states that the Handbook indicates that a Bachelor's degree is a minimum prerequisite to entry level positions within the market research field, which include research assistants, market interviewers, or professional sales jobs. Counsel argues that the beneficiary's experience, which is

equivalent to a Bachelor's degree in Marketing, is sufficient to perform the duties of market research coordinator with the petitioning firm.

The record does not indicate that the beneficiary earned any college-level credits. However, a credentials evaluation service determined that the beneficiary's thirteen years of experience in the field of sales and marketing was equivalent to a bachelor's degree in marketing from an accredited institution of higher education in the United States. This evaluation is reasonable and will be accepted. The duties of the offered position were listed as:

In this position, Mr. [REDACTED] will assume responsibility for researching market conditions in local and regional area of the Imprint Agency's territory to determine the potential sales of our product line. He will establish research methodologies and will examine and analyze statistical data to forecast future marketing trends. Mr. [REDACTED] will gather data on competitors and analyze prices, sales, and methods of marketing and distribution, collect data on customer preferences and buying habits. He will use the results of his findings to develop strategies for expansion of the Imprint Agency's market share.

The duties described are the responsibilities of a market research analyst. According to the DOL 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 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 submits a professional position evaluation from an Assistant Professor of Marketing of Fordham University which indicates that the required knowledge for the position of market researcher coordinator and equivalent positions is not so sophisticated as to necessitate a master's-level education. In this case, the duties of the offered position and not the job title determine the educational requirements for the job. As stated above, the duties described by the petitioner are the responsibilities of a market research analyst as described in the DOL Handbook. After considering the position evaluation forwarded for consideration, it is concluded that the petitioner has not established that the offered position can be classified other than as a market research analyst. Additionally, the petitioner had not shown that the minimum requirement for the position that the petitioner is offering is a bachelor's degree in marketing. Accordingly, the decision of the director will not be disturbed.

Additionally, while not addressed by the director, the regulation at 8 C.F.R. 214.2(h)(4)(ii) states that a United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee;
- (3) Has an Internal Revenue Service Tax identification number.

The record shows that the president of the firm (who is apparently its only employee to date) is petitioning to employ himself in the offered position of market research coordinator. It is determined that in this case, the firm would not be creating a viable employer-employee relationship between it and the beneficiary should the visa petition be approved. In effect, the president of the firm (who is already employed by it) would be merely assigning himself a second and subordinate role in the company. Therefore, the petition may not be approved for this additional reason.

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.