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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: WAC-99-224-53498 Office: California Service Center

Date: NOV 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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy.

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.

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 a market research business with two employees and a gross annual income of \$300,000. It seeks to employ the beneficiary as a market researcher for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a statement from the petitioner's vice president.

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 proceeding 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, the petitioner's vice president states that he has revised the proffered position to that of a research assistant and has revised the duties accordingly.

It is determined that the petitioner has not complied with the terms of the labor condition application because the title of the proffered position is not what is reflected on the application. The record contains no evidence that an amended labor condition application was filed pursuant to 8 C.F.R. 214.2(h)(2)(i)(E). It is also noted that the file contains no evidence that an amended

petition with fee was filed along with the new labor condition application. As such, the record as it is presently constituted indicates that the proffered position is that of a market research analyst.

The record indicates that the beneficiary received a bachelor of arts degree in business administration. The duties of the proffered position are described in pertinent part as follows:

- identify the specific sub-market within a specific multi-ethnic group for study according to the needs of our customers;
- conceptualize the parameters for conducting the study;
- carry out market research amongst the multi-ethnic target segments;
- devise research methodologies;
- computerize data;
- prepare reports.

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 a bachelor's degree in business administration. 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. Furthermore, even if the Service were to conclude that a bachelor's degree is sufficient for a market research analyst

position within the petitioner's industry, the beneficiary would still not be eligible to perform the duties of the offered position because he does not possess a bachelor's degree in the specific field of either economics or marketing. Rather, the beneficiary's bachelor's degree is in business administration, which although related to the industry in which the beneficiary works, does not qualify him for a market research analyst position.

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 bachelor's degree in business administration. 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.