



D2

U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to  
protect identity of unwaranted  
investor of company assets

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



File: EAC-01-120-50365 Office: Vermont Service Center Date: 30 APR 2002

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]

Public Copy

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, 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 is a travel and marketing firm with 7 employees and a gross annual income of \$1.8 million. It seeks to employ the beneficiary as a research assistant/administrative analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

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 determined that the offered position appears to be that of a travel agent, an occupation which does not qualify as a specialty occupation. The Service further determined that the beneficiary's associate degree and work experience are not equivalent to a bachelor's degree in a specialized area.

On appeal, counsel disagrees with the director's conclusion that the proffered position is comparable to that of a travel agent. Counsel contends that the offered position combines the duties of a paralegal, a market research analyst, and a translator. Counsel further argues that the record contains sufficient evidence to show that the beneficiary qualifies to perform services in a specialty occupation.

Counsel's argument is noted. The Service does not rely solely on the title of a position in determining whether that position qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

**Research**

1. Conduct research on various historical themes and issues in American history; determine important event, individuals, and places of interest.
2. Conduct research on themes of natural history in America; identify places of interest.
3. Collect and analyze data regarding cost issues related to lodging, travel, food, and other special services.
4. Translate above plans, brochures, and other sales material from English to Japanese for business partners and clients in Japan to market group tour travel and other travel services.
5. Analyze financial data as directed by management with respect to proposed marketing plans, profitability, business operations.

**Writing and Other Duties:**

1. Act as law librarian, classifying and organizing information related to group tours plans.
2. Prepare office accounts.
3. prepare routine correspondence to clients such as brief letters and notices to clients.

The Service does not agree with counsel's argument that the offered position combines the duties of a paralegal, a market research analyst, and a translator.

Counsel argues that the Department of Labor (DOL) has determined in its Dictionary of Occupational Titles (DOT) that the position of research assistant is similar to that of a paralegal, an occupation which requires a bachelor's degree according to the DOT. However, a reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

The only similarity between the duties of the proffered position and those of a paralegal is that the position involves the research, classifying, and organizing of information. That duty relates more closely to the position of administrative assistant, an occupation which will be discussed further in this decision.

Additionally, the marketing duties of the proffered position are not the duties typically performed by a market research analyst as set forth in the DOL's Occupational Outlook Handbook (Handbook), 2002-2003 edition. Therefore, the Service is not persuaded to classify the position as the specialty occupation of a market research analyst.

The first reason why the Service is not persuaded to classify the offered position as a market research analyst position concerns the particular duties of the offered position compared with the duties of a typical market research analyst position. At page 239 of the Handbook, the DOL states that "[m]arket research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales." While the duties described by the petitioner appear to involve some sales analysis, the proffered position appears to be primarily that of a market research manager as will be discussed further in this decision.

The second reason why the Service is not persuaded to classify the offered position as a market research analyst position relates to the type of industry in which the beneficiary would be employed. Information in the Handbook, at page 149, provides insight into the types of industries in which market research analysts are normally found. According to the DOL:

Private industry provided about 4 out of 5 jobs for salaried workers, particularly economic and marketing research firms, managements consulting firms, banks, securities and commodities brokers, and computer and data processing companies.

Although the list of private industry employers is not all inclusive, the DOL's description of a market research analyst's job implies that these types of positions are found within large firms

or corporations, such as banks or worldwide pharmaceutical companies.

The record indicates that the petitioner, which is engaged in the travel industry, employs 7 persons and has an approximate gross annual income of \$1.8 million. The travel industry, the industry in which the petitioner is engaged, is not within the DOL's list of industries that typically require the services of a full-time individual who performs only market research analyst duties.

Although the Service does not agree with the petitioner that the position it is offering is a market research analyst position, the petitioner could, nevertheless, qualify the offered position as a specialty occupation if the petitioner could establish that:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

After careful review of the evidence of record, it is concluded that the proffered position combines the duties of a marketing manager, an administrative assistant, and a translator.

According to the Handbook, translators normally acquire their skills from a long period of on-the-job training. The record does not contain any evidence to show that the beneficiary's duties as a translator are of such complexity that a baccalaureate degree in a specific specialty is necessary for the successful completion of its duties.

Similarly, the Handbook at page 27 states that:

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinate's, including *product development managers* and *market research managers*, they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets . . . Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firms's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development.

The beneficiary's proposed job duties, which include developing marketing plans and analyzing financial data as directed by management, with respect to proposed marketing plans, profitability, and business operations, parallel the job responsibilities of a market research manager. Information at page 28 of the Handbook does not indicate that a position as a market research manager requires a bachelor's degree in a specific field of study. Rather, most employers prefer a wide-range of educational backgrounds or promote individuals from within companies.

According to the DOL at page 423 of the Handbook, administrative assistants conduct research, prepare routine correspondence, and prepare statistical reports. Information at page 423 of the Handbook does not indicate that a position as an administrative assistant requires a bachelor's degree in a specific field of study. Administrative assistants acquire skills in various ways. Training ranges from high school vocational education programs to 1- and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges.

In view of the foregoing, it is concluded that the petitioner has not shown that a baccalaureate degree is a minimum requirement for entry into the occupation.

Second, the petitioner has not shown that it normally requires a bachelor's degree in a specific, specialized field of study or its equivalent for the position being offered to the beneficiary. Indeed, counsel specifically states in his letter dated June 19, 2001, that the position requires "at least a baccalaureate degree in the arts or its equivalent, college level work in English, history, political science or the equivalent, and knowledge of research methodology." Clearly, the petitioner requires a bachelor's degree, but there is no stated requirement that the degree must be in a specific, specialized area. It appears that the petitioner is seeking an individual with a general liberal arts degree.

Third, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

Beyond the decision of the director, the petitioner's labor condition application was certified on April 30, 2001, a date subsequent to March 2, 2001, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. Therefore, the petition may not be approved for this reason as well.

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.