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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-01-187-55166 Office: California Service Center

Date: 16 DEC 2002

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 that 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 that 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 that 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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a medical group with nine employees and a stated gross annual income in excess of \$1.7 million. It seeks to employ the beneficiary as a marketing analyst for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in the proffered position. The director also determined that the petitioner had failed to submit a certified labor condition application.

On appeal, counsel submits a brief and documentation.

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 first 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, counsel argues that the beneficiary's foreign bachelor's degree in business administration qualifies her to perform services in the proffered position of marketing analyst.

The beneficiary possesses a bachelor of science degree in business administration from De La Salle University-Dasmarias, Cavite, the Philippines. However, the record does not contain an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2 (h) (4) (iii) (D) (3). Nevertheless, the beneficiary shall be

considered to possess the equivalent of a bachelor's degree in business administration as awarded by an institution of higher learning in the United States.

In a separate letter that accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

...will be called upon to research market conditions in local and regional area to determine potential sales of services. The Market Research Analyst will also establish research methodologies and design a proper format for data gathering such as surveys, questionnaires, etc. He or she will also be expected to examine and analyze statistical data gathered to forecast future marketing trends that we will attempt to utilize in order for our customers [sic] base to increase to expected levels to generate the profits we seek. The Market Research Analyst will devote most of the working hours in analysis of the statistical data gathered and prepare them in a format easily understood by the partners in the company.

The director determined that the duties described are the responsibilities of a market research analyst. According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 239-241, 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 director has determined that 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 240 of the Handbook, the DOL states the following about the level of training required for market research analysts:

Graduate education is required for many private sector economist and market and survey research jobs....

Market and survey researchers may earn advanced degrees in economics, business administration, marketing, statistics or some closely related discipline. Some schools help graduate students find internships or part-time employment in government agencies, economics consulting firms, financial institutions, or marketing research firms prior to graduation....

Whether working in government, industry, research organizations, marketing, or consulting firms, economists and market and survey researchers with bachelor's degrees

usually qualify for most entry-level positions as a research assistant, administrative or management trainee, marketing interviewer, or any of a number of professional sales jobs. (Emphasis added.) A master's degree is usually required to qualify for more responsible research and administrative positions.

In the instant case, the director has determined the beneficiary is seeking employment as a market research analyst in the private sector. The record reflects that the beneficiary holds the equivalent of a bachelor's degree in business administration. The beneficiary does not hold a master's degree in economics, business administration, marketing, statistics or some closely related field, which the DOL indicates is generally the minimum requirement for a market research analyst job in the private sector. The petitioner has failed to submit any evidence to show that the beneficiary possesses any work experience that could be considered remotely related to market research analysis. The petitioner has not shown that the beneficiary possesses employment experience that is the equivalent of formal graduate education, that such work experience was experience in a specialty occupation, or that it is sufficient to overcome the beneficiary's lack of a master's degree in economics, business administration, marketing, statistics or some closely related area.

Counsel argues that this office has previously held that a beneficiary possessing a bachelor's degree in one of the specific specialties cited above qualifies to perform services as a market research analyst. Counsel cites three unpublished Administrative Appeals Unit decisions to support this argument. However counsel fails to provide a copy of any of these decisions with the appeal. Furthermore, such unpublished decisions have no precedential effect in this proceeding. See 8 C.F.R. 103.3(c). Although a person with a bachelor's degree in business administration may be qualified to perform duties in entry level positions such as research assistant, administrative or management trainee, marketing interviewer, or any of a number of professional sales jobs, the DOL indicates that a master's degree in economics, business administration, marketing, statistics or some closely related field, is generally the minimum requirement for a market research analyst job in the private sector. Accordingly, it is concluded that counsel's argument that the bachelor's degree in business administration possessed by the beneficiary is sufficient to qualify her to perform services in the specialty occupation of market research analyst cannot be considered as persuasive.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a master's degree in a specific specialty. The record contain no evidence that the beneficiary holds a state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the

foregoing, the petitioner has not persuasively established that the beneficiary qualifies to perform services in the proffered position of market research analyst.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,
3. Evidence that the alien qualifies to perform services in the specialty occupation....

The petitioner has provided a properly certified labor condition application. Nevertheless, that application was certified on December 20, 2001, a date subsequent to May 8, 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. Since this has not occurred, it is concluded that 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.