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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536

PUBLIC COPY



19 DEC 2002

File: EAC-00-265-53895 Office: Vermont 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)

**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 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, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a textiles business with two employees and a stated gross annual income of \$175,000. It seeks to employ the beneficiary as a market research analyst for a period of three years. The director denied the petition because the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel asserted that the Service had previously determined that the beneficiary qualified to perform services in a specialty occupation in that the Service approved a previous H-1B visa petition filed on behalf of the beneficiary by a different petitioner. Counsel further asserted that the beneficiary's bachelor's degree in business administration qualified him to perform the duties of a market research analyst.

The Associate Commissioner for Examinations dismissed the appeal reasoning that the petitioner had not shown that the beneficiary held a master's degree in economics, marketing, or a related field, the normal minimum requirement for employment as a market research analyst.

On motion, counsel asserts that the Service has approved petitions for H-1B petitions for market research analyst positions where the beneficiaries held a bachelor's degrees in fields "far removed" from economics or marketing. Counsel reiterates his assertion that the beneficiary's business administration courses qualify him to perform the duties of a market research analyst. Counsel finally argues that the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, does not indicate that an individual with a bachelor's degree is automatically excluded from working as a market research analyst. Counsel asserts that businesses routinely seek individuals with bachelor's degrees to perform entry-level market research analysis.

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.

The duties of the proffered position are described in pertinent part as follows:

[The beneficiary's] job will be to research market conditions in various segments [of] the US and Latin American economies, for a variety of textile-related industries which are relevant to the success of our operations, the purpose being to create, expand, update and maintain databases of information which will serve as statistical foundations for the particular marketing programs (both existing and yet to be created) to which they are deemed suited. He will need to study current trends, interests, bureaucratic obstacles, costs of raw materials and labor, transportation, advertising and generally, what will and will not work in dealing with Latin American companies and other pertinent issues. A typical week of work will involve conduct of surveys, retrieving information, then shifting emphasis to analysis of the data, with conclusions and recommendations to follow in regularly written reports.

The beneficiary's duties described as described by the petitioner are the responsibilities of a market research analyst. According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 239, market research analysts are concerned with the potential sales of a product or service. They analyze statistical data and information on past sales 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 position.

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. . .

Whether working in government, industry, research organizations, marketing, or consulting firms, economists and market and survey researchers with bachelor 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. A master's degree usually is required to qualify for more responsible research and administrative positions. . . .

In this case, the beneficiary is seeking employment as a market research analyst. 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.

Counsel's argument on motion that the Service has previously approved H-1B petitions filed on behalf of other beneficiaries holding bachelor's degrees in fields "far removed from economics or marketing" is not persuasive. The Service is not required to approve petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain copies of the previously approved petitions and their supporting documentation. It is, therefore, not possible to determine definitively whether they were approved in error or whether the facts and conditions have changed since their approval. Determinations of eligibility are based on the totality of evidence available to the Service at this time.

While counsel asserts on motion that businesses routinely seek individuals with bachelor's degrees to perform entry-level market research analysis, he has not submitted any independent evidence to corroborate his assertion. Counsel's statement that the federal government hires candidates with a bachelor's degree for entry-level market research analyst positions, while correct, is not relevant to the facts of this case since this petitioner is a private business and not a government agency.

Counsel argues that the DOL does not indicate in the Handbook that an individual with a bachelor's degree is "automatically disqualified" from market research analyst positions. In support of his argument, counsel quotes a passage from the Handbook, 2000-2001 edition, at page 149 stating that a bachelor's degree is "generally not sufficient" to perform such work. While the sentence quoted by counsel does not appear in the 2002-2003 edition of the Handbook, this statement clearly supports the Service's position that a master's degree in the specific specialties of economics or marketing is the normal minimum requirement for employment as a market research analyst. The Handbook, 2002-2003 edition, states that a bachelor's degree may be sufficient for entry-level jobs as a research assistant, marketing interviewer, or professional sales job, but these jobs are not marketing research analysis jobs. In order for a job to qualify as a specialty occupation, a baccalaureate degree in a specific specialty must be the normal minimum requirement for entry into the occupation. See 8 C.F.R. 214.2(h)(4)(iii)(A). In this case, a master's degree in economics, marketing, or a closely related discipline is the normal minimum requirement for employment as a market research analyst. The petitioner has not shown that the beneficiary has a master's degree or its equivalent in a specific specialty.

With respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, the Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct. 51 (U.S. 2001).

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. Accordingly, the previous decision of the Associate Commissioner 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 decision of the Associate Commissioner dated February 5, 2002, is affirmed.