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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File: EAC-00-256-52457 Office: Vermont Service Center

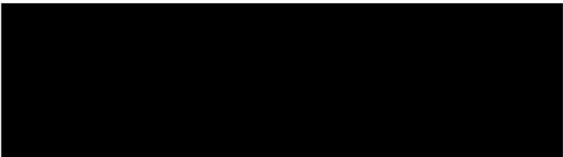
Date: 4 FEB 2017

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:



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

The petitioner provides pharmaceutical companies in the United States and Europe with targeted internet data mining and analysis in the area of public affairs, communications, and medical marketing. It has 35 employees and an approximate gross annual income of \$3.67 million. It seeks to employ the beneficiary as a market research analyst for a period of three years. The director determined that the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel argues that the nature of the duties of the proffered position is so specialized and complex that knowledge required to perform such duties is associated with the attainment of a bachelor's degree in business administration with a concentration in marketing.

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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree

required by the specialty occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary holds a Bachelor of Science degree in Business Administration from Thammasat University in Bangkok, Thailand, and a Master of Business Administration degree conferred by George Mason University in Fairfax, Virginia. Her undergraduate university courses included the following: principles of marketing, quantitative analysis, direct marketing, consumer behavior, business statistics, marketing information systems, marketing research, and sales management. Her graduate courses at George Mason University included the following: marketing management, business to business marketing, theory and policies of international business, and managerial statistics.

The record further indicates that the beneficiary was employed by the petitioner as a marketing research analyst during her period of practical training as a nonimmigrant F-1 student. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

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

As a Marketing Research Analyst, the Beneficiary will be an integral part of the Marketing team at the Petitioner's office in Washington, D.C. The Marketing Research Analyst will be responsible for duties, which include, but are not limited to, conducting and managing business and market information research, targeting such areas as competitor analysis, industry analysis, emerging markets and service/concept development.

The Marketing Research Analyst will conduct specific market and competitor research and reporting, as well as conduct secondary research, such as daily web searches and identification of potential competitors and other significant topics that come up on the Internet. Furthermore, the Marketing Research Analyst will assist in the development of marketing strategies, implement and execute the strategies to provide existing clients with desired Internet-related information. The Marketing Research Analyst will research, analyze data obtained from the research, and prepare reports and graphic illustrations.

In response to a Service request for additional evidence, the petitioner provided the following description of the duties of the offered position:

1. **Marketing Research and Analysis for the Petitioner's Clients**

The petitioner will research and perform complex analysis on the effectiveness of each client's web site compared to its competitors in the pharmaceutical industry. The analysis will help clients better understand their presence on the Internet. In detail, the Beneficiary's responsibilities in the area of Marketing Research and Analysis include:

- a) Establish research methodology and design format for data gathering;
- b) Gathering numerical data from client's HTML embedded web site;
- c) Performing quantitative analysis to determine:

Reach - The number of users browsing client's site.

Attention - The time spent viewing certain pages.

Immersion - The average time spent viewing certain pages for each company as compared to the average time spent viewing pages for all companies.

Mindshare - A function of Reach and Attention weighed by the relative amounts of time spent on each site.

- d) Performing secondary research for industry updates and trends...;
- e) Reporting and graphing illustrations. The Beneficiary will prepare Executive Summary and graphic illustrations...

2. **Strategic Planning and Marketing Plan for the Petitioner**

The Beneficiary will assist in strategic planning by developing a quarterly marketing and implementation plan for the Petitioner. In detail, the Beneficiary's responsibilities in the area of Strategic Planning and Marketing Plan include:

- a) Monitoring and analyzing external business factors that affect Petitioner's performance such as existing and potential competitors, availability of substitute service, Internet usage growth, and consumer online behavior;
- b) Examining the Petitioner's internal business factors such as existing services,

distributing method, pricing, and promotion to ensure that the Petitioner's operation is in competitive parameter;

- c) Participating in team generating, analyzing, and managing key business metrics to provide a base from which existing services can be improved and future services can be developed;
- d) Performing Competitive Analysis both industry and service specific to benchmark Petitioner's services; and
- e) Identifying sources of competitive advantage and disseminating the results to influence marketing decisions.

The proffered position appears to be that of a marketing research analyst. The Department of Labor's Occupational Outlook Handbook, (Handbook), 2000-2001 edition, at pages 148-149 finds that graduate training is required for many private sector marketing research analyst jobs, and for advancement to more responsible positions. Marketing research analysts may earn advanced degrees in economics, business administration, marketing, statistics, or some closely related discipline. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations. The beneficiary is also qualified to perform the duties of a marketing research analyst, as the beneficiary holds a master's degree in business administration with an emphasis in marketing.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.