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U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC-00-265-53895 Office: Vermont Service Center

Date: 05 FEB 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:



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 dismissed.

The petitioner is a textiles business with two employees and an approximate 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 determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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, counsel states, in part, that the Service previously determined the beneficiary was eligible for H-1B status with another petitioner, and, therefore, the beneficiary is qualified to perform the duties of a specialty occupation with the current petitioner. Counsel further states that the proposed duties are so complex as to require the services 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:

[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 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 she 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 her 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 a bachelor's degree in business administration. Accordingly, the decision of the director will not be disturbed.

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 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.