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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-00-273-53342 - Office: Vermont Service Center

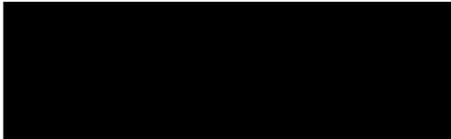
Date: 20 FEB 2002

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 travel agency with 15 employees and a gross annual income exceeding \$50 million. It seeks to employ the beneficiary as a marketing 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 beneficiary's educational background and relevant work experience have been evaluated to be equivalent to a business administration degree in marketing. Counsel further states that an individual who possesses a baccalaureate degree in marketing or an equivalent is sufficiently qualified to perform the duties of a marketing analyst.

The record indicates that the beneficiary received a bachelor of arts degree in business administration conferred by an Indian institution. A credentials evaluation service found the

beneficiary's foreign education equivalent to three years of academic study toward a baccalaureate degree from an accredited institution of tertiary education in the United States. The beneficiary also had more than eight years of marketing-related employment experience at the time the visa petition was filed. The same credentials evaluator found the beneficiary's foreign education and employment experience equivalent to a bachelor of business administration degree in marketing from an accredited institution of tertiary education in the United States.

At page 149 of the Occupational Outlook Handbook, the Department of Labor (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 the equivalent of a bachelor's degree in business administration with a specialty in marketing. 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.

The petitioner has not persuasively established that the minimum requirement for a market research analyst position is a bachelor's degree in business administration with a specialty in marketing. Accordingly, the decision of the director will not be disturbed.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the proffered position is a specialty occupation. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.