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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 00 085 50306 Office: VERMONT SERVICE CENTER

Date: **JAN 22 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a firm involved in television movie syndication with 16 employees and an approximate gross annual income of \$9,300,000. 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 position is a specialty occupation. Counsel also advised that a brief would be submitted in support of the appeal within 30 days. As the 30-day period of time has elapsed and the brief has not yet been received, a decision will be made on the record as it is presently constituted.

The regulation at 8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

In addition, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) provides that a petitioner can qualify the offered position as a specialty occupation if the petitioner could establish that:

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 director denied the petition finding that the proffered position did not require the attainment of a bachelor's degree in a specific specialty. The director relied on the fact that the petitioner currently employed another market researcher with an academic degree in the field of biology.

On appeal, counsel states that the director erred in not classifying the position as a specialty occupation because the position requires the attainment of a bachelor's degree in business. Counsel also asserts that the other market researcher employed by the petitioner has completed additional courses leading to a certificate in marketing.

Counsel's argument on appeal is not persuasive. The record does not establish that the proffered position is a specialty occupation. The petitioner has not established that the position meets any of the four factors enumerated above.

In the initial petition, the petitioner indicated that the beneficiary would be responsible for conducting studies to assist in the planning of future film purchases, releases and syndications. The beneficiary would also be responsible for conducting surveys and tests aimed at determining viewer preferences and habits in certain specified geographic areas. The beneficiary would also be responsible for examining and analyzing statistical market trends, gathering data and preparing reports. The record also reflects that the beneficiary has the equivalent of a bachelor's degree in Business Administration.

The petitioner has not established that a bachelor's or higher degree in a specific specialty is the normal requirement for entry into the proffered position. The record contains a statement from the petitioner indicating that the position can be filled by an individual with a bachelor's degree in any academic field. The petitioner's requirement that the position requires the attainment of a bachelor's degree is not sufficient to establish that the position is a specialty occupation. The petitioner must demonstrate that the minimum requirement for the position is a bachelor's degree in a specific area of academic study or a closely related field, not just a bachelor's degree.

Additionally, the petitioner has not provided any evidence that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. While the petitioner asserts that the other market researcher has taken additional courses in the field of marketing, the record does not contain copies of the individual's college transcripts or resume.

Furthermore, the petitioner has not presented any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. While the petitioner has submitted copies of employment advertisements for market research positions, it has not been demonstrated that these businesses are similar in size and scope to the petitioner.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Therefore, the director's decision is affirmed.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.