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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.
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Washington, D.C. 20536

26 JUL 2002

File: EAC-01-199-53756 Office: Vermont Service Center Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 tour and travel operator with seven employees and a gross annual income of \$6,886,679. It seeks to employ the beneficiary as a travel market analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree in a specialized area was required for the proffered position. On appeal, counsel states, in part, that the petitioner previously submitted six expert opinions demonstrating that a bachelor's degree is required for the proffered position. Counsel also states that the petitioner additionally provided job advertisements for positions similar to the proffered position demonstrating that a bachelor's degree is required. Counsel submits new expert opinions to demonstrate that a baccalaureate degree in marketing is an industry standard for a travel market analyst position, and states that the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) also finds that the position of market research analyst is a professional occupation.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

At this time [the petitioner] seeks the professional services of an individual to fill a position of Travel Marker [sic] Research Analyst for a temporary period of three years in order to prepare and accomplish the project for expansion and development in Eastern and Western Europe. The Travel Marker [sic] Research Analyst will develop the marketing, expansion and organization of the company's travel and tour operator services in the projected countries in Western and Eastern Europe; will prepare surveys, reviews and analysis of the U.S. market, local travelers' preferences and habits; will research, analyze market conditions in projected countries and potential service providers, such as hotels, motels, places of interest; will gather data on competitors, analyze prices and existing tour packages for the projected countries in Western and Eastern Europe; will assist the upper management to make decisions on the preparation, design, pricing and promotion of services; will develop tour packages; prepare brochures and promotional materials for the projected countries; will develop contacts in projected countries to assist in the negotiation of contracts and dependable arrangements with airlines and service providers in projected countries; will select and train personnel in projected countries in order to maintain established programs in these countries; will serve as liaison between airlines and the company, and will select and train personnel in projected countries to perform marketing functions in these countries; will attend seminars and function as a Western and Eastern European travel expert and contact person at travel industry trade show and conventions; will organize and carry out promotional trips for selected groups and agents to promote the newly developed travel and tour packages to projected countries.

The duties described, while quite detailed, are not the responsibilities of a market research analyst as set forth in the DOL's Handbook, 2002-2003 edition. Therefore, the Service is not persuaded to classify the position as the specialty occupation of a market research analyst.

The first reason why the Service is not persuaded to classify the offered position as a market research analyst position concerns the particular duties of the offered position compared with the duties of a typical market research analyst position. In its Handbook, the DOL states that "[m]arket research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales." While the duties described by the petitioner appear to involve some sales analysis, they appear to be primarily those of a marketing manager or a

market research manager for reasons that will be discussed herein.

The second reason why the Service is not persuaded to classify the offered position as a market research analyst position relates to the type of industry in which the beneficiary would be employed. Information in the Handbook, provides insight into the types of industries in which market research analysts are normally found. According to the DOL:

Private industry provided about 9 out of 10 jobs for salaried workers, particularly economic and marketing research firms, managements consulting firms, banks, securities and commodities brokers, and computer and data processing companies.

Although the list of private industry employers is not all inclusive, the DOL's description of a market research analyst's job implies that these types of positions are found within large firms or corporations, such as banks or worldwide pharmaceutical companies.

The record indicates that the petitioner, which is a tour and travel operator employs seven persons and has a gross annual income of \$6,886,679. The tour and travel operator business in which the petitioner is engaged, is not within the DOL's list of industries that typically require the services of a full-time individual who performs only market research analyst duties. For these reasons, the Service is not persuaded to label the offered position as a market research analyst position.

Although the Service does not agree with the petitioner that the position it is offering is a market research analyst position, the petitioner could, nevertheless, 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.

See. 8 C.F.R. 214.2(h)(4)(iii)(A).

An analysis of the beneficiary's proposed duties reveals that the job being offered is primarily the job of a marketing manager or a market research manager. According to the Handbook:

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including *product development managers* and *market research managers*, they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets . . . Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firms's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development.

The beneficiary's proposed job duties, which include "research[ing], analyz[ing] market conditions in projected countries and potential service providers, such as hotels, motels, places of interest . . . prepar[ing] brochures and promotional materials for the projected countries" and "select[ing] and train[ing] personnel in projected countries to perform marketing functions in these countries" parallel the job responsibilities of a marketing manager or market research manager. Information in the Handbook does not indicate that either position requires a bachelor's degree in a specific field of study. Rather, most employers prefer a wide-range of educational backgrounds or promote individuals from within companies. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

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. Furthermore, although the petitioner has submitted various Internet job advertisements, 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. 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.

Counsel has provided six letters from individuals involved in the travel industry. They primarily state that a baccalaureate or higher degree is required for a market research analyst position. The Service does not dispute that a market research analyst position is a professional occupation. As stated previously, however, the petitioner has not persuasively demonstrated that the proffered position is primarily that of a market research analyst rather than a marketing manager or market research manager.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding for the position of a market research manager or marketing manager. Therefore, the director's decision is affirmed.

Beyond the decision of the director, the record does not contain an evaluation of the beneficiary's educational background in combination with her employment experience, from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1). As this matter will be dismissed on the grounds discussed, these issues 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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.