



D2

U.S. Department of Justice
Immigration and Naturalization Service

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



File:  Office: California Service Center Date: 31 OCT 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 that 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 that 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 that 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 designer, manufacturer, and distributor of golf clubs with an estimated 2,250 employees and a stated gross annual income of \$697.6 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 beneficiary qualifies to perform services in the proffered position.

On appeal, counsel submits a brief and documentation.

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 argues that the beneficiary's degrees in physical education and golf complex operations and management qualify her to perform services in the proffered position of market research analyst.

The beneficiary has completed the Curriculum and Instruction of Health and Physical Education program at Niigata University in Niigata, Japan. A credentials evaluation service found the beneficiary's foreign education equivalent to a bachelor of arts degree in physical education from an accredited university in the

United States. The evaluation appears reasonable and the conclusions stated therein are accepted. In addition, the beneficiary received an Associate of Applied Business degree from the San Diego Golf Academy in San Diego, California. The record contains a copy of the beneficiary's transcript from this institution reflecting participation in a two year academic program that would typically result in an associate's degree in business administration or management. Therefore, the beneficiary is considered to possess the equivalent of a bachelor of arts degree in physical education and an associate's degree in business administration/management.

In a separate letter that accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

... [The beneficiary] will be responsible for collecting and reporting club testing data for market research purposes. [The beneficiary] will assist in the daily set-up and organization of the Test Center. She will supervise the test site activities by coordinating with the players in their testing of golf club performance. [The beneficiary] will also be collecting test data and maintain a record of hits on test clubs as well as document comments of players regarding the testing of the golf clubs. Such record keeping is critical to ensure product quality and improve performance if necessary.

The director determined that the duties described are the responsibilities of a market research analyst. According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 239-241, 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 director has determined that 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 240 of the Handbook, the DOL states the following about the level of training required for market research analysts:

Graduate education is required for many private sector economist and market and survey research jobs....

Market and survey researchers may earn advanced degrees in economics, business administration, marketing, statistics or some closely related discipline. Some schools help graduate students find internships or part-time employment in government agencies, economics

consulting firms, financial institutions, or marketing research firms prior to graduation....

Whether working in government, industry, research organizations, marketing, or consulting firms, economists and market and survey researchers with bachelor's degrees usually qualify for most entry-level positions as a research assistant, administrative or management trainee, marketing interviewer, or any of a number of professional sales jobs. (Emphasis added.) A master's degree is usually required to qualify for more responsible research and administrative positions.

In the instant case, the director has determined the beneficiary is seeking employment as a market research analyst in the private sector. The record reflects that the beneficiary holds the equivalent of a bachelor's degree in physical education and a separate associate's degree in business administration/management. The beneficiary does not hold a master's degree in economics, business administration, marketing, statistics or some closely related field, which the DOL indicates is generally the minimum requirement for a market research analyst job in the private sector. Even if the Service were to conclude that a bachelor's degree is sufficient for a market 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 any of the academic disciplines cited above.

While the petitioner has provided a copy of the beneficiary's resume, this document reflects that beneficiary possesses no work experience that could be considered remotely related to market research analysis. The petitioner has not shown that the beneficiary's work experience is the equivalent of formal graduate education, that such work experience was experience in a specialty occupation, or that it is sufficient to overcome the beneficiary's lack of a master's degree in economics, business administration, marketing, statistics or some closely related area.

Counsel asserts that it was inappropriate to apply an industry standard in determining that the proffered position was not professional in nature. However, these proceedings are not concerned with membership in the professions, but rather membership in a specialty occupation. While these terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes any prior statutes, regulations, and case law relating to characterization of a position as a profession.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a master's degree in a specialized field

of study. The record contain no evidence that the beneficiary holds as state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, the petitioner has not persuasively established that the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the decision of the director will not be disturbed.

Beyond the decision of the director, it appears the record contains insufficient evidence to support the conclusion that the proffered position is that of a market research analyst, a position normally considered by the Service to be a specialty occupation. The offered job does not involve any duties that could be considered to be analytical in nature. Rather, the duties of the offered job as described by the petitioner parallel those of a data entry and information processing worker. Information contained in the Handbook at pages 383-384, does not indicate that such a position requires a bachelor's degree in any field of study as most employers generally hire high school graduates to fill these positions. 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.