



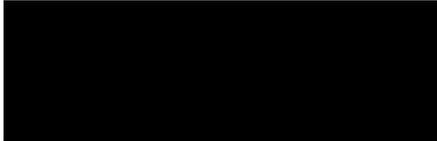
DA

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-00-271-52902 Office: Vermont Service Center

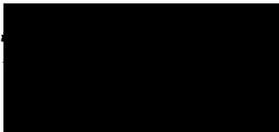
Date: SEP 25 2002

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 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 director's decision will be withdrawn and the matter remanded for further action and consideration.

The petitioner is a business engaged in the import and export of food products between the United States and Japan. It has 300 employees and a stated gross annual income of \$181 million. It seeks to employ the beneficiary as an agribusiness 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 Service ignored expert testimony, published sources of authority, and case law in determining that the position of agribusiness analyst was not a specialty occupation.

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 duties of the offered position as described by the petitioner did not appear to require the services of an individual who possessed a bachelor's degree in business or a directly related field. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

...she will compile and analyze data related to the purchase and export of food, food products, fish, meat, and agricultural products. She will design, implement, and analyze market studies and surveys to determine availability, probable prices, price fluctuations, and factors which may affect prices such as crop carryovers, production, and consumption. She will survey and analyze statistical data related to the American food industry, project future marketing trends, conduct analyses of prices, sales and marketing strategies of competitors and examine government regulations. She will prepare periodic reports concerning the most economical methods of

purchase and export of foods and food products in the U.S. food industry including suppliers, agents, commissioned brokers, manufacturers, manufacturers representatives, auctions and the purchase of futures; transportation and seafood and fish farming likely to experience and [sic] greatest economic growth; and provide recommendations which may be utilized to expand the parent organization's business in Japan.

Reporting directly to the President, she will be expected to develop a comprehensive plan for the long-term growth and development of our firm on a worldwide basis. Based upon on-going research on markets and product lines, she will create specific business plans and strategies for specific product lines that increase our marketing success and profit margins in markets that offer the greatest opportunities and are consistent with the company's long-term plan.

The petitioner then provided an additional one and one-half pages describing detailed duties of the proffered position as they relate to the petitioner's specific business activities.

In these proceedings, the duties of the position are dispositive and not the job title. The offered position is that of a marketing research analyst. A significant number of duties listed above are those of a market research analyst. The Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 239-241, indicates that the usual duties of a market research analyst encompass those listed above. These include designing, implementing, and analyzing market studies and surveys to determine availability, probable prices, price fluctuations, and factors which may affect prices, examining and analyzing statistical data to forecast marketing trends, researching local, regional or national areas to determine potential sales of products and services, and establishing research methodology. Therefore, it is concluded that the petitioner has overcome the basis of the director's denial and demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

Nevertheless, the petition may not be approved at this time. The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence deemed necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.