



*DR*

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: EAC-01-221-52478 Office: Vermont Service Center

Date: **SEP 30 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a tour and travel agency with 40 employees and a gross annual income in excess of \$20 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 offered position is a specialty occupation.

On appeal, counsel submits a brief and supporting documentation.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) 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.

8 C.F.R. 214.2(h)(4)(ii) further 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 be so specialized and complex as to require a bachelor's degree in a specific field of study.

On appeal, counsel asserts that the proffered position is a specialty occupation because the duties to be performed by the beneficiary are professional and require an individual with a minimum of a bachelor's degree.

Counsel's assertion on appeal is not persuasive. The Service does not rely solely on the title of a position in determining whether that position qualifies as a specialty occupation. The Service

considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Design, promote, price and distribute travel and travel related services;
2. Generate, define and evaluate marketing options for various airlines and tour packages;
3. Devise methods and procedures for collecting data regarding airfares, cruises, etc;
4. Code, tabulate and evaluate data for the above;
5. Make recommendations to management based on findings and suggest course of actions [sic].

Counsel states correctly that most employers require at least a bachelor's degree in economics, business administration, or a related field for an entry level market research analyst position. However, the duties of the proffered position as described by the petitioner are not the responsibilities of a market research analyst as that job is described in the Department of Labor's (DOL) Occupational Outlook Handbook (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." The duties of the offered position do not involve the analysis of past sales to predict future sales. Rather, the duties of the offered position are those of a marketing 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, management 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 companies.

The record indicates that the petitioner, which is engaged in the travel and tourism industry, employs 40 persons and has a gross annual income in excess of \$20 million. The travel and tourism industry 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 that of a marketing manager in the travel industry. 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 firm'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. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

The beneficiary's proposed job duties, which include designing, promoting, pricing, and distributing travel and travel related services and generating, defining and evaluating marketing options for various airlines and tour packages, parallel the job responsibilities of a marketing manager. Information in the Handbook does not indicate that a marketing managerial position requires a bachelor's degree in a specific field of study. Rather, most employers prefer a wide-range of educational backgrounds. Many employers prefer those with experience in related occupations plus a broad liberal arts background.

Counsel argues that the DOL has determined in its Dictionary of Occupational Titles (DOT) that a marketing analyst position requires a bachelor's degree in a specific field of study. However, a reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Counsel asserts that the degree requirement is common to the travel industry in parallel positions among similar organizations. In support of this assertion, counsel submits a letter from Ms. Farida Garda, who identifies herself as the marketing director of Global Network Tours. Ms. Farida states that she has reviewed the duties of the position and notes that the duties are of an "advanced and sophisticated nature customarily associated with one, who has completed at least a baccalaureate degree in Marketing Management or Management Sciences." Ms. Farida further states that "it is not uncommon for the [t]ravel industry to employ professional persons in such positions so that they maintain their success and continue to expand." However, Ms. Farida has not provided any independent evidence to corroborate her statements. Furthermore, one letter does not demonstrate an industry standard.

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.

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.

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.

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.