



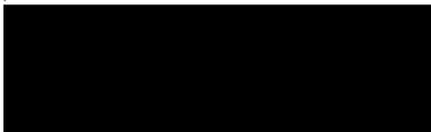
DA

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-01-115-51389 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 business engaged in the sale and distribution of costume jewelry with eight employees and a gross annual income of \$150,000. It seeks to employ the beneficiary as a sales manager for a period of three years. The director determined that the petitioner had not established that the proffered 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 determined that the petitioner had failed to establish that the proffered position requires the services of an individual with a baccalaureate degree in a specific field of study.

On appeal, counsel argues that the proffered position most closely resembles that of a market research analyst and submits an amended description of the duties of the position.

Counsel's argument 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. Coordinate with our buyers to determine their sales requirements and upcoming trends. To develop programs on different themes as per individual requirements. And coordinate with our suppliers to review and evaluate so as to meet best customer demands.
2. [The beneficiary] will be meeting with the clients accordingly she will coordinate with our global sources of costume jewelry and direct them with her suggestions. [The beneficiary] will also hold responsibility of organizing and overseeing all activities such as trade shows and representing our organization and give the vision of latest sales trends in [f]ashion [j]ewelry, which is coming in future.
3. Product simplification to eliminate unprofitable items from sales line.
4. To represent the company at the trade associations, to organize trade shows on [f]ashion [j]ewelry.
5. To coordinate with all departments within establishment to prepare manual and technical publications. Prepare periodic sales report showing sales volume and potential sales.

On appeal, counsel asserts that the proffered position most closely resembles that of a market research analyst and provides the following amended description of the duties of the position:

- a. Develop detailed [s]ales strategies for [REDACTED] and stay abreast of the latest trends in the industry. Research market condition [sic] in local, regional and national areas to determine potential increase in business.
- b. Establish research methodologies and design formats for data gathering such as surveys, opinion polls, or questionnaires;
- c. Examine and analyze research data to forecast future trends in the industry;

- d. Collect, compile, classify and analyze data on customer preferences;
- e. Analyze the design, promotion, price and distribution of service lines in order to ensure increased sales and profitability;
- f. Identify and define market opportunities in order to focus, create and implement appropriate strategies and responses;
- g. Generate, refine and evaluate sales strategies;
- h. Monitor performance and study sales strategies to determine their effectiveness;
- i. Provide management with information and advise [sic] to make decisions on the promotion, distribution, design and pricing of service lines; Interface with executive and other managerial staff to determine feasibility and appropriateness of sales strategies;
- j. Determine the advisability of adding new services to existing ones. Perform feasibility studies to improve sales so as to increase market share;
- k. Gather data on competitors and analyze prices, sales and methods of distribution to determine the demand for products and services by the company as well as competitions to identify potential customers;
- L. Collect data on customer preferences, study various factors such as region, company income and level of needs in that area.

Counsel correctly states that the minimum requirement for an entry-level market research analyst position is a bachelor's degree in marketing, economics, or a related field. However, the proffered position does not appear to be that of a market research analyst. While the amended description of the job's duties appears to paraphrase some of the duties of a market research analyst as that job is described in the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, the job duties listed in the Handbook provide a general indication of the types of duties typically performed by a market research analyst. Counsel's amended list of job duties provides little insight into the actual day-to-day work activities that would be performed by the

beneficiary. It is incumbent upon the petitioner to provide a detailed and comprehensive description of the beneficiary's actual proposed duties to establish that the job meets the statutory definition of a specialty occupation. Additionally, while the duties described by counsel on appeal involve some market analysis, it appears that the position being offered primarily involves researching local, state, and regional market conditions, generating and refining sales strategies, and monitoring the effectiveness of such sales strategies.

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 positions are normally found within large firms or corporations, such as banks or worldwide companies.

The record indicates that the petitioner, which is engaged in the sale and distribution of costume jewelry, employs eight persons and has a stated gross annual income \$150,000. The costume jewelry sales and distribution business 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 classify 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 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 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 studying market conditions, developing marketing strategies, and monitoring sales strategies to determine their effectiveness, parallel the job responsibilities of a market research manager. Information in the Handbook does not indicate that a market research manager position requires a bachelor's degree in a specific field of study. Rather, most employers prefer a wide-range of educational backgrounds. Some 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 sales manager 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 the minimum requirement for the position being offered to the beneficiary.

Counsel asserts that the degree requirement or its equivalent is generally accepted for the position of sales manager throughout the industry among similar organizations. In support of his assertion, counsel submits a photocopy of two newspaper advertisements for a sales assistant and a sales account executive position respectively. However, neither of these ads specifies that a bachelor's degree in a specific field of study is required. Furthermore, two advertisements do not demonstrate an industry standard.

Additionally, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the proffered position.

Finally, the petitioner has not demonstrated that the specific duties of the proffered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

With respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the previously approved petition and its supporting documentation. It is, therefore, not possible to determine definitively whether it was approved in error or whether the facts and conditions have changed since its approval.

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.