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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS. 3/F
Washington, D.C. 20536

AUG 18 2003

File: LIN 01 247 56609 Office: Nebraska Service Center Date:

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)

ON BEHALF OF PETITIONER:

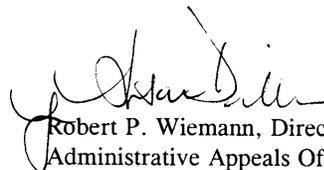
INSTRUCTIONS:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Michigan corporation providing healthcare management services to the general public. It has five employees and a gross annual income of \$247,837.69. The petitioner seeks to employ the beneficiary as a market research analyst/business analyst for a period of three years. The director determined that the beneficiary was not qualified to perform the services of the specialty occupation that is the subject of this petition. On appeal counsel asserts that the director's decision is erroneous.

On appeal, counsel indicated that she would file a brief in support of the appeal within 30 days. The appeal was filed on February 26, 2002. The AAO contacted counsel on February 4, 2003, indicating that no brief had been received. Counsel has failed to file a brief or offer additional information in support of the appeal. The record is therefore, deemed complete, and a decision will be rendered based upon the evidence in the record of proceeding.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 position that is the subject of this petition is defined as a market research analyst/business analyst. The requirements of the offered position are detailed by the petitioner as follows:

- Presents data setting forth current and long term

trends covering work of the company.

- Analyze research results and prepares reports to management
- Interprets data concerning expenditures, price and future trend daily statistical reports.
- Research economic trends, and short and long term marketing decisions of the company.
- Analyze and Research marketing condition in the local, regional and international areas.
- Gathers data on competitors and analyze prices and methods of marketing.
- Provide information regarding design and pricing of services.
- Examine and analyze statistical data to forecast future marketing trends.
- Establish research methodology and design format for data gathering.

The petitioner provided additional information on the beneficiary's job responsibilities at the request of the Bureau. The information provided essentially restated the above listed duties and will not be restated here. The Bureau does not simply rely on a position's title, however, 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 Bureau considers.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

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.

The position in question does indeed qualify as a specialty occupation. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 239-240, the Department Of Labor describes in part, the duties of market analyst and survey researchers as follows:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Like economists, market research analysts devise methods and procedures for obtaining the data they need. They often design telephone, personal, or mail interview surveys to assess consumer preferences. . . .

After compiling the data, market research analysts evaluate it and make recommendations to their client or employer based upon their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Analysts may conduct opinion research to determine public attitudes on various issues, which may help political or business leaders and others assess public support for their electoral prospects or advertising policies.

Survey researchers design and conduct surveys. They use surveys to collect information that is used for research, making fiscal or policy decisions, and measuring policy effectiveness, for example. . . .

The duties associated with the offered position fall within the scope of those duties detailed in the *Handbook* for the positions of market research analysts and survey researchers.

The *Handbook* further notes that graduate education is required for many private sector market and survey research jobs. Whether working in government, industry, research organizations, marketing, or consulting firms, market and survey researchers qualify for most entry level positions as a research assistant, administrative or

management trainee, marketing interviewer or professional sales positions. *Id* at 240. A minimum of a bachelor's degree with related experience is generally required for these entry level positions. The offered position is therefore, a specialty occupation.

In order to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner has presented evidence to indicate that the beneficiary's foreign education is equivalent to a bachelor's degree in Business Administration from an accredited university in the United States. The beneficiary's qualifications are, therefore, not sufficient to qualify him to perform the duties of this specialty occupation. The position offered is that of a market analyst or survey researcher. As previously noted, the *Handbook* indicates that graduate level education is normally required for these positions. The beneficiary does not have sufficient education or experience to academically qualify to perform the services of this specialty occupation. *Id* at 240. The offered position is not an entry level position for which the beneficiary may have qualified with some lesser degree of education, experience, or a combination thereof.

Counsel further asserts on appeal, that the director's decision is inconsistent with the Bureau's prior interpretation of statute. Counsel did not submit, however, any evidence of this alleged inconsistency and counsel's unsupported assertion is without merit. See *Matter of Treasure Craft of California*, 14

I&N Dec. 190 (Reg. Comm. 1972).

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.