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

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

File: EAC-01-248-53231

Office: VERMONT SERVICE CENTER

Date: AUG 10 2003

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:

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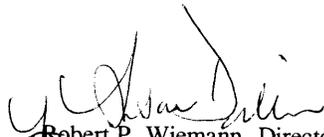
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner provides various business-related services, such as arranging training for Chinese businesspersons in order to enhance China's competitiveness in the global economy. It has six employees and a gross annual income of \$900,000. It seeks to employ the beneficiary as a research assistant for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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 director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the proffered position is similar to that of a market research analyst, a position that requires a baccalaureate degree. Counsel submits information from the *1997 Compensation Survey Report for the Washington-Baltimore Metropolitan Region* and the *1998/99 ECS Industry Report on Professional and Scientific Personnel Compensation* as evidence that the proffered position or positions similar to the proffered position, require a baccalaureate degree. Counsel additionally states that the proposed duties

require basic research skills, a fundamental understanding of the U.S. and Chinese socio-political and economic systems, reading and writing skills, and bilingual skills to translate or interpret for the petitioner's Chinese and U.S. clients.

Counsel's statement on appeal is not persuasive. The Bureau does not use a title, by itself, 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. The record contains a memo from the petitioner's general manager who describes the proposed duties as follows:

Conduct basic research; collect information and data; and assist in information and data analysis; draft reports; conduct certain document translation and/or oral interpretation on a needed basis.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The record contains the following:

- Untranslated Chinese newspapers, presumably published by the petitioner;

- Untranslated business brochure for the petitioner;
- Report entitled "Agricultural System in the United States" prepared by the petitioner's general manager for the business, China Grains and Cooking Oil Importing & Exporting Co.;
- Various correspondence indicating that the petitioner had arranged for U.S. businesspersons to meet with Chinese businesspersons to share business information;
- Document entitled "Overview of Training Programs and Services" describing the petitioner's activities;
- Document entitled "Developing Strategies for Chinese Consulting Companies" prepared by the petitioner's general manager;
- Document entitled "The 1st American and Chinese Small and Medium Businesses Cooperation Forum" prepared by the petitioner's general manager;
- Document entitled "Inner Mongolia Kaerden Cashmere Knitting Clothing Ltd., Co." prepared by the petitioner's general manager; and
- Document entitled "2002 China Textile Industry Seminar."

The duties described are not the responsibilities of a market research analyst as set forth in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. Therefore, the Bureau is not persuaded to classify the position as the specialty occupation of a market research analyst.

The first reason why the Bureau 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. At page 239 of the *Handbook*, the DOL states: "[m]arket, 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. . . ." While the duties described by the petitioner appear to involve some market analysis, they appear to be similar to those of an administrative assistant for reasons that will be discussed herein.

The second reason why the Bureau 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*, at page 240, 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 pharmaceutical companies.

The record indicates that the petitioner, which provides various business-related services, such as arranging training for Chinese businesspersons in order to enhance China's competitiveness in the global economy, has six employees and gross annual income of \$880,000. The business in which the petitioner is engaged 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 Bureau is not persuaded to label the offered position as a market research analyst position.

Although the Bureau 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.

An analysis of the beneficiary's proposed duties reveals that the job being offered is similar to the job of an administrative assistant. According to the DOL at page 423 of the *Handbook*:

Executive secretaries and administrative assistants, for example, perform fewer clerical tasks than other secretaries. In addition to arranging conference calls, and scheduling meetings, they may handle more complex responsibilities such as conducting research, preparing statistical reports. . . .

The beneficiary's proposed job duties, which include conducting basic research, collecting information, and providing document translation and/or oral interpretation, parallel the job responsibilities of an administrative assistant with bilingual duties. A review of the *Handbook* at page 424 finds that training ranges from high school vocational education programs that teach office skills and keyboarding to 1 and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges. Furthermore, the petitioner has not established that the beneficiary's duties as an interpreter/translator are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with the English and Chinese languages or a less extensive education, is necessary for the successful completion of its duties. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position. Third, although the record contains various job advertisements, none of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. The petitioner has not persuasively demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertised positions. For example, one of the positions is for a research assistant/project administrator for a complex public health surveillance system, and another position is for a "field marketing analyst 2" for Raytheon Company, an industry leader in defense, government and commercial electronics, space, information technology, technical services, and business aviation and special mission aircraft. 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. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.