

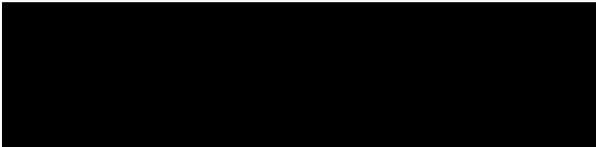
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

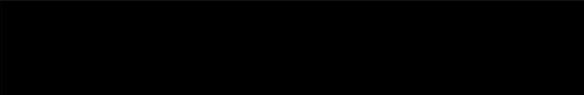
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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536



File: LIN-02-194-51669 Office: NEBRASKA SERVICE CENTER Date:

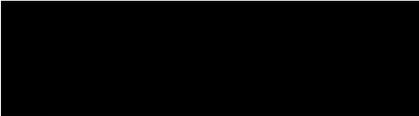
IN RE: Petitioner:  
Beneficiary:



DEC 30 2003

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:



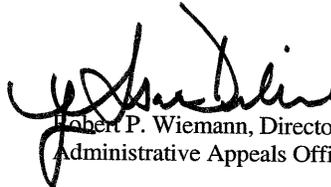
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office 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 Citizenship and Immigration Services (CIS) 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 is a physician's clinic with 12 employees and a gross annual income of \$920,000. It seeks to employ the beneficiary as a market research analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the petitioner's labor condition application was filed timely.

On appeal, counsel submits a statement. Counsel indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

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 or that the petitioner had filed a labor condition application timely. On appeal, counsel states, in part, that the Department of Labor and the AAO have already determined that a market research analyst position is a specialty occupation. Counsel further states that the petitioner's labor condition application was submitted to the Department of Labor

prior to the filing of the petition and, therefore, should be accepted as timely filed.

Counsel's statement on appeal is not persuasive. The AAO 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 AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Management of business marketing strategies, for [S]panish speaking customer base.

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 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 AAO is not persuaded to classify the position as the specialty occupation of a market research analyst.

The first reason why the AAO 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. . . ." In this case, the duties described by the petitioner appear to be similar to those of a marketing manager for reasons that will be discussed herein.

The second reason why the AAO 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 is a physician's clinic, has 12 employees and gross annual income of \$920,000. The business of market research for a physician's clinic 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 AAO is not persuaded to label the offered position as a market research analyst position.

Although the AAO 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.

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 similar to the job of a marketing manager. In its *Handbook* at page 27, the DOL describes the job of a marketing manager, in part, as follows:

Marketing managers develop the firm's detailed marketing strategy. . . . [T]hey 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. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development . . . .

A review of the DOL's *Handbook* at page 28 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in marketing managerial jobs. A wide range of educational backgrounds is suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, most marketing management positions are filled by promoting experienced staff or related professional or technical personnel. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

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 specific specialty for the

offered position. Furthermore, the petitioner has not presented any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The job listings are noted. None of the advertisers in these listings, however, is a physician's office. 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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the petitioner's labor condition application need not be examined further in this proceeding.

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.