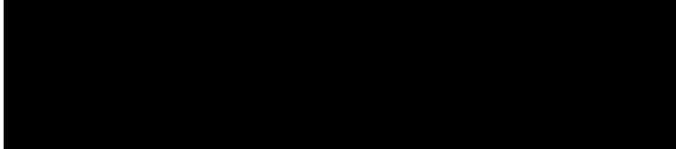


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY



MAR 12 2003

File: EAC-01-218-50007 Office: Vermont Service Center Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

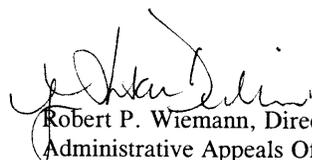
INSTRUCTIONS:

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 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a market research firm with four employees and a projected annual income of \$200,000. It seeks to employ the beneficiary as a market research analyst for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in the proffered position.

On appeal, counsel submits a brief and additional documentation.

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 issue to be examined in this proceeding is whether the beneficiary is qualified to perform the services of market research analyst, a position determined to be a specialty occupation.

On appeal, counsel argues that the director erred in determining that the beneficiary's bachelor's degree in anthropology did not qualify her to perform services in the proffered position.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), 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 beneficiary possesses a bachelor of arts degree from Seijo University in Tokyo, Japan. A review of the beneficiary's transcripts from this institution reveals that the majority of her classes were related to anthropological studies. A credentials evaluation service found the beneficiary's foreign education equivalent to a bachelor of arts degree in anthropology from an accredited university in the United States. The evaluation appears reasonable and the conclusions stated therein are accepted. Therefore, the beneficiary is considered to possess the equivalent of a bachelor of arts degree in anthropology.

The duties of the proffered position are described in pertinent part as follows:

...researching and evaluating defined variables for potential new markets in defined ethnic groups; analyzing competitors and developing business strategies for expansion of ICE's clients' products into untouched markets, including foreign markets; gathering data on competitors and analyzing prices, sales, and method of marketing and distribution; observing strategy effects and developing performance scenarios; collecting data on customer preferences and buying habits; compiling marketing reports and promotional materials for customers and senior management. The Market Research Analyst is responsible for the overall research and analysis of market conditions to determine potential sales of ICE's clients' cosmetic products into Asia and other markets.

In response to a subsequent Service (now the Bureau) request for additional evidence to support the petition, counsel submitted a detailed description of the duties of the offered job. The description includes an hourly breakdown of the position's activities during a typical forty hour work week.

The duties of the proffered position are those of a market research analyst. According to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at pages 239-241, a market research analyst is concerned with the potential sales of a product or service, and he or she analyzes data and information to predict future sales. Therefore, the beneficiary's educational and employment experience must meet the minimum requirements for a market research analyst. At page 240 of the *Handbook*, the DOL states the following about the level of training required for market research analysts:

Graduate education is required for many private sector economist and market and survey research jobs....

Market and survey researchers may earn advanced degrees in economics, business administration, marketing, statistics or some closely related discipline. Some schools help graduate students find internships or part-time employment in government agencies, economics consulting firms, financial institutions, or marketing research firms prior to graduation....

Whether working in government, industry, research organizations, marketing, or consulting firms, economists and market and survey researchers with bachelor's degrees usually qualify for most entry-level positions as a research assistant, administrative or management trainee, marketing interviewer, or any of a number of professional sales jobs. (Emphasis added.) A master's degree is usually required to qualify for more responsible research and administrative positions.

In the instant case, the beneficiary is seeking employment as a market research analyst in the private sector. The beneficiary possesses the equivalent of a bachelor's degree in anthropology. The beneficiary does not hold a master's degree or the equivalent in economics, business administration, marketing, statistics or some closely related field, which the DOL indicates is generally the minimum requirement for a market research analyst job in the private sector. Even if the Bureau were to conclude that a bachelor's degree is sufficient for a market analyst position within the petitioner's industry, the beneficiary would still not be eligible to perform the duties of the offered position because she does not possess a bachelor's degree in any of the specific specialties cited above.

The Bureau is not persuaded by the argument that an individual holding a bachelor's degree in anthropology is qualified to fill the proffered position. In listing additional academic disciplines that may prove beneficial to individuals seeking employment as a market research analyst, the DOL's *Handbook* notes the following at page 240:

In addition to courses in business, marketing, and consumer behavior, marketing majors should take other liberal arts and social sciences courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to economists and market and survey researchers, course in mathematics, statistics, econometrics, sampling theory and survey design, and computer science are extremely helpful.

Clearly, elements of anthropology, such as a strong background in research and survey methodology and the study of cultural development, human behavior, and social customs, are similar in nature to those subject areas identified in the paragraph above. However, an understanding of research and survey methodology and knowledge of human behavior is derived through the study of a wide range of subjects including the various social sciences. While these same elements are consistently cited as being beneficial for employment in a diverse variety of jobs throughout the documents counsel submits on appeal, the record does not contain a single piece of evidence demonstrating that a bachelor's degree in anthropology is required for employment as a market research analyst. Furthermore, it must be noted that the petitioner appears to place as much if not more value and emphasis on the beneficiary's ability to communicate fluently in Japanese and business contacts arising from her prior employment with a cosmetics firm, as it places on her bachelor's degree in anthropology in performing the duties of the offered job.

Although the petitioner has provided a copy of the beneficiary's resume, the record does not contain any evidence such as affidavits or letters of employment, to corroborate any of the employment listed in the resume. The record does not contain an evaluation of the beneficiary's purported work experience from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. Even if the beneficiary had worked as claimed, the petitioner has not shown that the beneficiary's work experience is the equivalent of formal graduate education, that such work experience was experience in a specialty occupation, or that it is sufficient to overcome the beneficiary's lack of a master's degree in economics, business administration, marketing, statistics or some closely related specialty.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a master's degree in a specific specialty. The record contain no evidence that the beneficiary holds as state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, the petitioner has not persuasively established that the beneficiary qualifies to perform services in the specialty occupation of market research analyst. Accordingly, the decision of the director will not be disturbed.

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.