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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.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 02 264 52389

Office: VERMONT SERVICE CENTER

Date: MAR 31 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:



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 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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a mining and mineral processing company with 93 employees and a gross annual income of \$37,102,000. 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.

On appeal, counsel submits a brief and additional documentation.

The term "specialty occupation" is defined at Section 214(i)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1184(i)(1), 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 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 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 duties of the proffered position did not appear to be so specialized and complex as to require a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the

attainment of a baccalaureate or higher degree in a specific specialty. Counsel further asserts that the petitioner requires a bachelor's degree in a specific specialty for the proffered position. Finally, counsel contends that the Bureau's reliance on a quote from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* limiting market research analyst positions to certain types of businesses is an abuse of discretion.

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.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Develop a new system for tracking and analyzing market intelligence information;
2. Monitoring boron mining and market in Turkey;
3. Investigating various markets served by the companies to develop market research, uncovering new trends in product and substitute product usage;
4. Identifying and defining market opportunities;

5. Creating and implementing appropriate strategies and responses according to the market opportunities;
6. Generating, refining and evaluating marketing actions and strategies;
7. Monitoring the company's marketing performance;
8. Studying marketing strategies to determine their effectiveness;
9. Conducting profitability studies with a view towards modifying and improving tactics to increase sales and overall market share; [e]xamining and analyzing research data to forecast future trends in the boron mining and processing industry;
10. Analyzing existing and potential product/service markets;
11. Establishing research methods and designing format using information sources and marketing trends;
12. Review financing options and make recommendations to the President;
13. Outline financing and its impact on the profitability of the various companies[.]

The Bureau will not qualify a "market research analyst" position as a specialty occupation solely on the basis of the position's title. When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In this particular case, the duties of the position appear to be those of a market research analyst as described by the DOL in the *Handbook*. A review of the *Handbook*, 2002-2003 edition, at page 240 finds that a baccalaureate degree in economics, business administration, or a related field is the normal minimum requirement for entry into the occupation. Graduate education is required for many private sector market and survey research jobs and for advancement to more responsible positions.

In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.