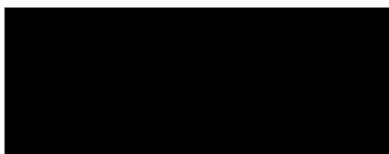


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

**identifying data deleted to
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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



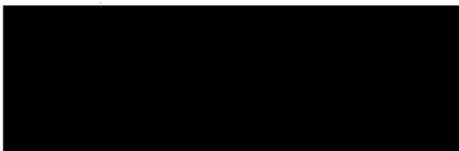
File: EAC-00-172-50040 Office: Vermont Service Center

Date: MAR 31 2003

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:



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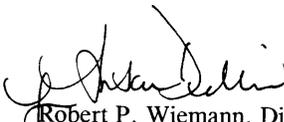
INSTRUCTIONS:

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. The director granted a subsequent motion to reconsider and affirmed his previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a wholesale electronics business with six employees and a gross annual income of \$2.5 million. It seeks to extend its authorization to employ the beneficiary as an international marketing 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 beneficiary is qualified to perform the duties of 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 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined 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 denied the petition because the petitioner had not demonstrated that it required the services of a full time market research analyst. The director further found that the beneficiary's baccalaureate degree does not qualify him to perform the duties of a market research analyst. On appeal, counsel states, in part, that the Bureau previously determined that the proffered position was a specialty occupation when it approved the petitioner's H-1B petition for the beneficiary. Counsel further states that the

beneficiary holds the equivalent of a baccalaureate degree in commerce and has numerous years of related employment experience, and thus is qualified for the proffered position. Counsel additionally states that the petitioner's increase in sales and business growth in foreign markets demonstrates that the beneficiary is entitled to an extension of his H-1B status.

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

Devise methods and procedures for obtaining data including designing surveys and questionnaires, conducting telephone, personal, or mail interviews, and offering product samples to access consumer preferences and indicate current trends.

Research market conditions in specified countries to determine potential sales of product.

Collect data on consumer preferences and buying habits.

Accumulate information used to identify and define marketing opportunities, and generate marketing strategies.

Examine and analyze statistical data to forecast future marketing trends.

Maintain confidentiality, accuracy, and good scientific methods in order to obtain useful results.

Develop marketing plans which will leverage current product strengths and opportunities in the overseas market.

Develop and recommend programs which will respond to current and projected competitive action.

Make recommendations based on findings and suggest course of action. Provide management with information to make decisions on the promotion, distribution, and pricing of products and services.

Develop appropriate advertising and promotional materials in accordance with established budgetary and quality standards.

Coordinate activities necessary to the time introduction of new products to overseas markets.

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 duties described, while quite detailed, 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. In its *Handbook* at page 239, the DOL states that "[m]arket 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 sales analysis, they appear to be primarily those of a marketing manager or a market research manager 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*, 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 engaged in the wholesale of electronics, employs six persons and has a gross annual income of \$2.5 million. 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.

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 the job of a marketing manager or a market research manager. According to the *Handbook* at page 27:

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including *product development managers* and *market research managers*, they 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 firms's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development.

The beneficiary's proposed job duties, which include "[d]evelop[ing] marketing plans which will leverage current and projected competitive action" and "[d]evelop[ing] appropriate advertising and promotional materials in accordance with established budgetary and quality standards" parallel the job responsibilities of a marketing manager or market research manager. Information in the *Handbook* does not indicate that either position requires a bachelor's degree in a specific field of study. Rather, most employers prefer a wide-range of educational backgrounds or promote individuals from within companies. 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, other than the beneficiary, 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. With respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. Mar. 15, 2000), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Furthermore, the petitioner has not presented any documentary evidence that businesses similar to the petitioner require a baccalaureate degree in a specific specialty or its equivalent for parallel positions. 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 for the position of a market research manager or marketing manager. Therefore, the director's decision is affirmed.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications 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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.