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

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

File: EAC-00-183-52935

Office: VERMONT SERVICE CENTER

Date: MAY 29 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:

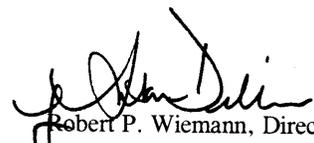
INSTRUCTIONS:

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. A subsequent appeal was rejected by the Administrative Appeals Office (AAO) for having been improperly filed. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The decision of the director will be affirmed.

The petitioner is a manufacturer of personal hygiene and household products with approximately 375 employees and an approximate gross annual income of \$38 million. It seeks to extend its authorization to employ the beneficiary as a market research analyst/planner for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On motion, 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined as follows:

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 a baccalaureate degree in a specific specialty is required for the proffered position. On motion, counsel states, in part, that the proposed duties, which include overseeing the computerized work systems, are so complex that a baccalaureate degree in science and commerce is required. Counsel also states that the beneficiary's university curriculum, which included principles of accounting, business ethics, quantitative methods, financial management, and other courses, are relevant to the required skills of the proffered position. Counsel further states that the beneficiary had been approved previously by the Bureau, and, unless the petition is revoked or withdrawn by the petitioner, the request for an extension is valid and legally sufficient for another three-year term.

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 stated that the market research analyst reports to the production planning manager and described the duties as follows:

- Coordinates production of new product lines. Works extensively with marketing customer product and packaging development groups, engineers, marketing, quality assurance, distribution and vendors.
- Monitors inventory position of regular business items utilizing Qantel inventory and marketing forecasts to adjust production schedule to permit timely production. Checks component availability and shortages.
- Draws upon the master schedule to establish sequence and lead time of each operation to meet shipping dates according to sales forecasts or customer orders.
- Analyzes production specifications and plant capacity data and performs mathematical

calculations to determine manufacturing processes, tools, and human resource requirements.

- Plans and schedules workflow for each department and operation according to previously established manufacturing sequences and lead times.
- Ensures the details on the Bill of Materials, assembly process instructions and purchase orders.
- Plans sequence of fabrication, assembly, installation, and other manufacturing operations for guidance of production workers.
- Confers with department supervisors to determine status of assigned projects.
- Expedites/De-expedites components for operations that delay schedules and alters schedules to meet unforeseen conditions.
- Prepares daily production reports.
- Analyze Qantel MRP to determine component requirements and to develop requisition report to Purchasing department and/or customers.
- Performs obsolescence and surplus inventory review, analysis and disposition.
- Creates documentation for customer's feedback of daily and monthly production activity including inventory reconciliations.

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. Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the AAO does not consider the *DOT* a persuasive source of information regarding whether a particular job 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.

The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The DOL's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

At page 239 of the *Handbook*, the DOL states: "Market, 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 assistant industrial production 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*, 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 engaged in the manufacture of personal hygiene and household products, has approximately 375 employees and gross annual income of \$38 million. The business of market research for the personal hygiene and household products manufacturing industry, 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 similar to the job of an assistant industrial production manager. According to the DOL at page 64 of the *Handbook*:

Industrial production managers coordinate the resources and activities required to produce millions of goods every year in the United States. Although their duties vary from plant to plant, industrial production managers share many of the same major responsibilities. These responsibilities include production scheduling, staffing, procurement and maintenance of equipment, quality control, inventory control, and the coordination of production activities with those of other departments.

The beneficiary's proposed job duties, which include monitoring inventory, and planning and scheduling workflow, parallel the job responsibilities of an assistant industrial production manager. Information at page 65 of the *Handbook*, finds that because of the diversity of manufacturing operations and job requirements, no standard preparation exists for this occupation. Although a college degree is required, degrees in business, engineering, as well as liberal arts fields appear welcome. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty 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. 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 being offered. For this reason, the petition may not be approved.

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. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 decision of the director dated February 20, 2001, is affirmed.