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

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



NOV 12 2003

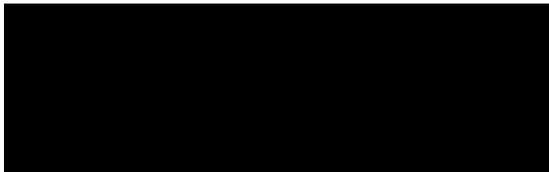
File: EAC 02 034 55028 Office: VERMONT SERVICE CENTER Date:

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:



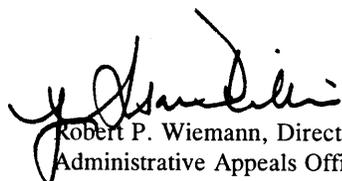
INSTRUCTIONS:

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 which 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, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner specializes in providing custom designed wedding consulting services to the general public. It has two employees and a projected gross annual income of \$60,000. The petitioner seeks to employ the beneficiary as a market research analyst for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation. Specifically, the director indicated that the size of the petitioner's business would not support "a professional position of market research analyst."

On appeal, counsel submits a brief. Counsel states, in part, that the proffered position is that of a market research analyst, that a market research analyst qualifies as a specialty occupation, and that the size of the petitioner's business operation is irrelevant when determining whether the proffered position qualifies as a specialty occupation.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" 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 further 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 field 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 AAO does not simply rely on a position's title 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. The petitioner detailed the duties of the proffered position with the filing of the I-129 petition:

Researches market conditions and economic trends in local and regional areas to determine potential sales of service[;] Establishes research methodology and designs format for data gathering, such as surveys, opinion polls, or questionnaires[;] Examines and analyzes statistical data to forecast future marketing trends[;] Evaluates sales statistics and reports[;] Sets projected revenue goals for [one], [five], and 10-year periods[;] Gathers data on competitors and analyzes prices, sales, and methods of marketing and distribution[;] Collects data on customer preferences and buying habits[;] Prepares reports and graphic illustrations of findings in order to make recommendations to management[;] Also, research[es] market trends to determine the most promising areas for addition of new services to increase our customer base and distribution of our pastries/video services and consulting services.

Subsequent to the filing of the initiating petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner submit: proof that a labor condition application (LCA) had been properly filed; an employment history for the beneficiary for the past 10 years; and proof of the beneficiary's immigration status while employed in the United States. In response to the director's request, the petitioner submitted a certified LCA and other requested information. The petitioner also submitted appropriate fees and a request for premium processing.

On March 18, 2002, the director submitted a second request for evidence. Specifically, the director requested evidence that a baccalaureate degree was a standard minimum requirement for the proffered position, and that a baccalaureate degree was a standard minimum requirement in the industry. In response to the director's request, counsel stated that the proffered position was a specialty occupation and made appropriate reference to the Department of Labor's *Occupational Outlook Handbook*, 2000-01 edition. Counsel also noted that the age and size of the petitioner's business operation was not relevant to qualification of the offered position as a specialty occupation. Counsel then submitted the following documentation: an opinion letter from George Daou, owner of Daou Market, stating that a minimum of a bachelor's degree in economics, marketing or its equivalent was

required for the position of Market Research Analyst in the pastry industry; a copy of an employment advertisement for a market research analyst with a Jacksonville, FL company involved in the sale of marble, stone and granite, indicating that a minimum of a bachelor's degree in economics or marketing was required for the position; and an affidavit from the petitioner detailing the amount of time the beneficiary would spend on tasks as a market research analyst. The petitioner's affidavit provided, in part, as follows:

Beneficiary's Duties as Market Research Analyst Broken down by Percentages of Time:

- Conduct Research: 35%
 1. Research market conditions and economic trends in local and regional areas to determine potential sales of service and products;
 2. Establish research methodology and design format for data gathering such as surveys, opinion polls, or questionnaires;
 3. Gather data on competitors and analyze prices, sales figures, and methods of marketing and distribution; [and]
 4. Collect data on customer preferences and buying habits.
- Examine and Analyze Complex Data: Approx. 40%
 1. Examine and analyze statistical data to forecast future marketing trends;
 2. Evaluate current sales statistics and reports; [and]
 3. Determine the projected revenue goals for 1, 5, and 10-year periods based upon analysis of findings.
- Make Recommendations: Approx. 25%
 1. Prepare reports and graphic illustrations of findings to [the] owner in order to make recommendations upon which decisions will be made; [and]
 2. Prepare recommendations regarding market trends to determine the most promising places

for expansion of branches and addition of services to increase customer base and revenue.

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 failed to qualify the proffered position as a specialty occupation. In the *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*) at 239-240, the Department Of Labor describes in part, the duties of market analyst and survey researchers as follows:

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. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Like economists, market research analysts devise methods and procedures for obtaining the data they need. They often design telephone, personal, or mail interview surveys to assess consumer preferences. . . .

After compiling the data, market research analysts evaluate it and make recommendations to their client or employer based upon their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Analysts may conduct opinion research to determine public attitudes

on various issues, which may help political or business leaders and others assess public support for their electoral prospects or advertising policies.

Survey researchers design and conduct surveys. They use surveys to collect information that is used for research, making fiscal or policy decisions, and measuring policy effectiveness, for example. . . .

The petitioner's job description reiterates portions of the above cited text. The description does little more, and is ambiguous at best. For example, the job description does not indicate: what tasks the beneficiary would perform in researching market and economic trends; how the beneficiary would gather data on competitors; what tasks the beneficiary would perform in collecting data on customer preferences; or what procedures the beneficiary would follow in analyzing statistical data to forecast future marketing trends. It is not possible to determine from the generalized job description presented, what duties the beneficiary will perform with regard to the offered position. Thus, it cannot be determined that: a baccalaureate or higher degree, or its equivalent is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel positions among similar organizations, or alternatively that the position is so complex or unique that it can be performed only by an individual with a degree; that the employer normally requires a degree or its equivalent for the position; or that 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. As such, the petitioner has failed to sustain its burden of proof and the proffered position fails to qualify as a specialty occupation.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.