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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



FILE: WAC 01 257 57054

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **NOV 19 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:

SELF-REPRESENTED

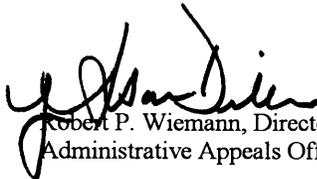
INSTRUCTIONS:

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 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 Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an import-export business that employs seven persons and has a gross annual income of \$1,085,982. It seeks to employ the beneficiary as a marketing analyst. The director denied the petition because the proffered position was not found to qualify as a specialty occupation.

On appeal, the petitioner submits a statement which asserts, in part, that a baccalaureate degree or higher is the normal entry requirement into the position of marketing analyst, and also that the proffered position is so complex that it can be performed only by an individual with a degree.

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

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation. Section 214(i)(1) of 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 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.

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 original petition, received at the Service Center on August 9, 2001, the petitioner described the proposed job duties as "to develop, analyze and maintain [sic] market data base, to conduct margin and financial analysis, [and] to prepare marketing reports showing trends and conditions." On October 11, 2001, the director requested more information about the job duties and position requirements, as well as additional evidence regarding the beneficiary's nonimmigrant status.

In response to the Request for Evidence, the petitioner provided the following expanded job description:

1. To support the sales division & sales representatives in collecting & analyzing market information, customer purchasing patterns & histories, and to identify the market trends and that of the competitors. (40% of time)
2. To support product manager in analyzing & developing product cost structures, pricing & marketing strategies. (40% of time)
3. To participate in trade shows to make sales presentation & communicate with visiting customers.

(20% of time)

The petitioner also submitted a section from the Department of Labor's *Occupational Outlook Handbook (Handbook)*, as well as several job postings.

The director denied the petition on February 6, 2002, noting that the job description was so vague that it could not be determined whether the position could be considered a specialty occupation. The director also found that, based on a review of the record, the petitioner had not established any of the regulatory criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner asserts that the actual job duties are the same as those described in the *Handbook*. The petitioner states that the *Handbook* description of the position suggests that the duties of a marketing analyst are so highly specialized that, pursuant to 8 C.F.R. § 214.2(h)(4)(ii), one can draw the conclusion that the proffered position is a specialty occupation. The brief, cursory descriptions found in the original petition and in the response to the Request for Evidence, however, do not provide enough information about the position's day-to-day, specific duties. The record lacks detail and provides no context as to the incumbent's role within the petitioner's organization. Without more information about the petitioner's actual offered position, it may not be concluded that it is a specialty occupation.

In addition to the above-mentioned failure to provide detail, the petitioner has not shown the industry standard, as asserted, through the submitted job postings. There is no evidence on record that the companies advertising the openings are similar in nature or size to that of the petitioner, or that the openings are for positions parallel to the instant position. Upon review of the record, the petitioner has not presented any evidence to meet any of the four regulatory criteria found in 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 not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.