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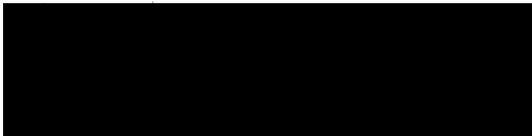


FILE: LIN 02 114 55280 Office: NEBRASKA SERVICE CENTER Date: APR 14 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

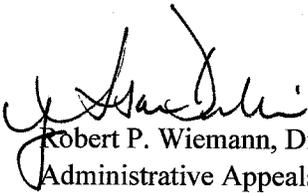
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 involved in the import, export, and manufacture of food products. It seeks to employ the beneficiary as a market research analyst and to classify him as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary 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:

[A]n 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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with attachments. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a market research analyst. Evidence of the beneficiary's duties includes: the I-129 petition with attachment; and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: identify and evaluate the effectivity of the company's current marketing strategies and material; gather data on competitors' strengths and weaknesses and methods of marketing; analyze, prepare, and present reports to assist the petitioner in preparing plans to increase clientele; establish research methodology and design formats for data gathering such as surveys and questionnaires to forecast future trends; research on probabilities of diversification; manage research and consulting jobs for market research studies and industry studies; prepare proposals for business strategies, creative solutions, methodology, timing and scheduling and execution plans; establish companies/products database; establish knowledge and business connection of selected industries in Japan; conduct project management, including scheduling, job assignments, cost control and performance evaluation; research market conditions in local markets and Japan to determine potential sales; examine and analyze statistical data to forecast future marketing trends; gather data on competitors and analyze prices, sales, and methods of marketing and distribution; collect data on customer preferences and buying habits; review market analyses to determine customer needs; and travel overseas to observe and examine market trends. The petitioner established that the beneficiary possesses a Bachelor of Arts Degree in Economics from California State University, but did not state specifically that a degree in any specific specialty was required for the offered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel states that the proffered position is that of a market research analyst and satisfies the aforementioned regulatory criteria for classification as a specialty occupation.

The job description submitted by the petitioner is generic, and lacks sufficient detail to determine specifically what duties the beneficiary would perform on a daily basis. For example: 25 per cent of the beneficiary's time would be involved in managing research and consulting jobs for market research studies and industry studies – the petitioner does not demonstrate, however, what tasks the beneficiary would perform in managing research and consulting jobs for market and industry studies; 10 per cent of the beneficiary's time would be spent in preparing proposals for business strategies, creative solutions, methodology, timing and scheduling and execution plans – it is impossible to determine from this description what tasks the beneficiary would actually perform and the complexity of those duties; 10 per cent of the beneficiary's time would be spent in establishing knowledge and business connection of selected industries in Japan – this description

does not identify the tasks to be performed; 10 per cent of the beneficiary's time would be spent researching market conditions in local markets and Japan to determine potential sales – the description does not indicate what tasks the beneficiary would perform in researching market conditions, the method of research, etc. Some of the language used by the petitioner in describing the duties to be performed is merely a restatement of language from the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* and *Dictionary of Occupational Titles (DOT)* for the position of a market research analyst. The duties described by the petitioner are insufficient in detail to establish that the proffered position is that of a market research analyst, or any other specific position for that matter.

As such, it is impossible to determine whether: a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the proffered position is so complex or unique that it can be performed only by an individual with a degree; or 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. Accordingly, the offered position does not meet any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1),(2) or (4). Further, the petitioner offered no proof that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The petitioner has, therefore, failed to establish that the proffered position is a specialty occupation and the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.