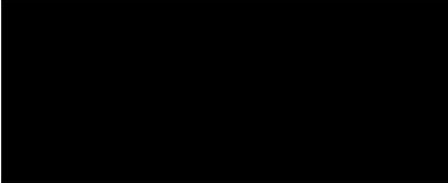




U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 03 017 54548 Office: CALIFORNIA SERVICE CENTER Date: AUG 11 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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The director of the 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 importer/exporter that seeks to employ the beneficiary as a business analyst. The petitioner, therefore, endeavors to classify the beneficiary 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 states that the proffered position 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.

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 proceeding 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a business analyst. Evidence of the beneficiary's duties includes, in part: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail developing and planning promotional strategies, programs, and events; participating in trade shows and exhibitions; researching regional and international markets to determine sales potential; introducing products to China and establishing distribution channels; analyzing statistics to forecast market trends; directing market research analysis and formulating marketing strategies to expand the client base and develop new services; studying reports about import and export products, regulatory controls, and air and ground distribution; collecting and analyzing sales records and data to produce management reports, financial forecasts, budgets, and administrative procedures; analyzing operating and accounting practices to eliminate deficiencies; processing import and export transactions and correcting errors; authorizing sales transactions; studying government trade regulations and satisfying export requirements; interfacing with in-bound and out-bound agencies to ensure timeliness and accurate delivery of goods; and researching currency exchange rates, money value, and other financial instruments to determine financial risk and forecasting. The petitioner stated that a candidate must possess a bachelor's degree in business administration, marketing, finance, commerce, or a closely related field.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position resemble those performed by a sales/marketing manager, positions that do not require a bachelor's degree in a specific specialty. Specifically, the director found that the position involved general sales, bookkeeping, and marketing duties.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel mentions that the proposed duties are essentially those performed by a marketing research analyst, a position requiring specific bachelor's degrees. Counsel claims that the proffered position requires a bachelor's degree because its duties are complex, involving international trade, product and market research, and foreign currency exchange rates. Referring to allegedly precedent decisions, counsel contends that the AAO already recognizes business and market research analyst positions as specialty occupations. Counsel likens the proffered position's duties of engaging in market and trade research, gathering and analyzing data, examining financial and business practices, and studying regulatory compliance and the company's operations and management systems to the duties of business analyst and market research analyst positions. Counsel claims that the director's analogizing the proffered position to marketing and sales manager jobs does not diminish its professional nature. Counsel contends that only a small portion of the beneficiary's duties involve managing sales personnel and performing accounting/bookkeeping duties. Counsel claims that an analyst also oversees and reviews a company's sales, products, and services. Finally, counsel mentions that the *Handbook* states that employers in the private sector require a graduate degree for a market research analyst position, though some candidates with bachelor's degrees qualify for entry-level positions.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

In the December 6, 2002 letter, the petitioner stated that the proffered position was a specialty occupation: its duties were an amalgam of those performed by an accountant and marketing research analyst as depicted in the DOL's *Dictionary of Occupational Titles (DOT)*.

This statement is not convincing, however. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree 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 *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because it is similar to certain positions in the *DOT*.

A careful examination of the *Handbook* discloses that the duties of the proffered position are not a combination of those performed by an accountant and a market research analyst. Some of the proffered position's duties resemble those performed by a market research analyst such as analyzing statistical data on past sales to predict future sales, gathering data on competitors, and analyzing prices, sales, and methods of marketing and distribution. Nonetheless, the beneficiary will not perform one vital duty of a market research analyst which is to devise methods and procedures for obtaining data such as designing telephone, mail, or Internet surveys to assess consumer preferences or conduct personal interviews by going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained

interviewers, under the market research analyst's direction, usually conduct the surveys. Consequently, the AAO finds that the primary duty of a market research analyst would not be performed by the beneficiary.

The *Handbook* describes four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, management accountants record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Very few of the duties described in the *Handbook* apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities or be involved in performance evaluation or asset management. With this significant dissimilarity, we find that the beneficiary's duties and responsibilities do not rise to the level of an accountant.

The director properly concluded that many of the duties of the proffered position are similar to those performed by a marketing manager. Like the beneficiary who will develop promotional strategies, participate in trade shows, analyze statistics to forecast market trends, and research markets for sales potential, the *Handbook* portrays a market manager as developing a firm's detailed marketing strategy, determining the demand for products and services offered by the firm and its competitors, identifying potential markets, developing a pricing strategy, and in collaboration with others, monitoring trends that indicate the need for new products and services and overseeing product development.

Most of the beneficiary's administrative duties are an amalgam of those performed by cargo and freight agents and financial clerks. The petitioner's October 4, 2002 letter communicated that it provided third party logistics for manufacturers and vendors, and offered product distribution services, order management, fiscal activities, international trade formalities, and foreign representation. This seems akin to a cargo and freight agent. Like the beneficiary who will process import and export transactions, study regulatory controls and air and ground distribution, and interface with in-bound and out-bound agencies to ensure timeliness and accurate delivery of goods, the *Handbook* portrays cargo and freight agents as arranging for and tracking incoming and outgoing cargo and freight shipments in airline, train, or trucking terminals or on shipping docks. They expedite the movement of shipments by determining the route that shipments are to take and by preparing all necessary shipping documents. For imported or exported freight, cargo and freight agents verify that the proper customs paperwork is in order.

According to the *Handbook*, financial clerks are an organization's financial recordkeepers. Similar to the beneficiary who will produce management reports, financial forecasts, budgets, and authorize sales transactions, financial clerks update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. They also make purchases, prepare invoices, and keep track of accounts. More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account, and review invoices and statements to ensure that all information is accurate and complete.

The *Handbook* reports that employers find a wide range of educational backgrounds suitable for entry into marketing manager positions. According to the *Handbook*, an employer may find suitable a person with experience in a related occupation and an associate or bachelor's degree in any field. For marketing, sales, and promotion manager positions, the *Handbook* indicates that some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing. However, most employers do not normally require a bachelor's degree in a specialized field. For cargo and freight agent positions, the *Handbook* reports that employers do not require more than a high school diploma; for most financial clerk positions, employers require at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting. Thus, the petitioner has not satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

There is no evidence in the record that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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. As previously discussed, the duties of the proffered position are an amalgam of those performed by marketing managers and the administrative duties correspond to those performed by financial clerks and cargo and freight agents. Consequently, the nature of the specific duties is not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, 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.

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