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U.S. Citizenship
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Services

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DEC 02 2004
Date:

FILE: WAC 02 285 54107 Office: CALIFORNIA SERVICE CENTER

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 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 a provider of private security services that seeks to employ the beneficiary as a marketing analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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 marketing analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 17, 2002 letter in support of the petition; 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 implementing marketing strategies and plans; maintaining regular, ongoing contact with referral sources through personal visits, telephone calls, and brochures; providing trend and activity reports; monitoring marketing trends and competition; developing and preparing press releases, advertisements, brochures, and flyers; and training and coordinating staff members to serve as back-up in responding to customer inquiries. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business, marketing, commerce, or a related field.

The director found that the proffered position, which reflects the duties of advertising, marketing, promotions, public relations, and sales managers, was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proposed duties, which require highly analytical and quantitative orientation and familiarity in the field of commerce, business management, economics, and other closely related disciplines, are so complex that a baccalaureate degree is required. Counsel states further that the proffered position is similar to that of a market research analyst, a position that has always been considered by the AAO as a specialty occupation.

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 turns first to 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)).

The AAO does not concur with counsel that the proffered position is primarily that of a market research analyst. The petitioner has not persuasively demonstrated that the proposed duties entail the level of responsibility of a market research analyst. A review of the Market and Survey Researcher employment information in the DOL's *Handbook*, 2004-2005 edition, finds that market research analysts are employed primarily in management, scientific, and technical consulting firms, insurance carriers, computer systems design and related firms, software publishers, securities and commodities brokers, and advertising and related firms. In this case, the petitioner is a provider of private security services with 40 employees and a claimed gross annual income of \$488,821. A review of the Advertising, Marketing, Promotions, Public Relations, and Sales Managers job descriptions in the *Handbook* confirms the accuracy of the director's assessment to the effect that, the job duties parallel those

responsibilities of these positions. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for advertising, marketing, promotions, public relations, and sales managers jobs.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for various positions. One of the advertised positions is that of a business development manager for Pinkerton, a global leader in security consulting, investigations, and business risk services. Although a bachelor's degree is required, no specific field of study is specified. Another advertised position is that of a marketing analyst for [REDACTED] a global strategy and technology consulting firm with 16,000 employees on six continents. Upon review of the advertisements, there is no evidence to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. As stated previously, the duties of the proffered position parallel the duties of advertising, marketing, promotions, public relations, and sales managers jobs. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for these positions. In this case, the beneficiary holds a Bachelor of Science degree in commerce with a major in management conferred by a Filipino institution. An evaluator from a company that specializes in evaluating academic credentials concluded that the beneficiary's foreign studies are equivalent to a Bachelor of Science in Business Administration degree with a concentration in management conferred by regionally accredited colleges and universities in the United States. The beneficiary, therefore, is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.

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