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

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[redacted]

DEC 14 2004

FILE: LIN 03 173 50776 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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 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 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 a distributor and manufacturer of office and school supplies. In order to employ the petitioner as a market research analyst, the petitioner 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 on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The thrust of the appeal is that the petition should be granted because the director's decision was based on an erroneous assessment of the evidence.

For reasons discussed below, the AAO has determined that the director was correct in denying the petition because the petitioner has not established that the proffered position as a specialty occupation. The AAO based its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's RFE; (3) the letter and exhibits that counsel (no longer representing the petitioner) submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, the petitioner's two October 10, 2003 letters on appeal, and the additional evidence which accompanied the letters.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184 (i)(l), 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] 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 [2] 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." (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO consulted the current 2004-2005 edition of the *Handbook,* as well as the excerpt on economists and market and survey researchers that the petitioner submits on appeal from the 2003 Internet version.

It is noted that the director's decision did not address the *Handbook's* treatment of market research analysts, even though the petitioner asserted that the beneficiary would be working as one. Instead, the director limited his comments to the *Handbook's* information on the marketing manager occupation, which, as the director observed, does not normally require a bachelor's degree in any specific specialty. The AAO, however, has considered the *Handbook's* information on market research analysts in light of the evidence of record, but found no basis there for disturbing the director's decision. This is because, as described in the record of proceeding, the duties of the proffered position do not substantially comport with those of a market research analyst.

On appeal, the petitioner presents the following list of duties, which were also included in the response to the RFE. (The brackets contain the petitioner's projections of relative worktime requirements.)

- Analyze market data of present product line and potential product offering in Asia and [the] United States. Formulate strategies to explore, retain and expand product markets. [20%].

- Present product/service market report and analysis result to external and internal audience. Recommend strategies [to] achieve specific business goals and propose related projects. Specific market reports an Analyst needs to produce include but are not limited to: 1. Business culture and model comparison[;] 2. International macro economy index analysis[;] 3. Customer behavior analysis[;] 4. Foreign currency exchange rate monitor report; [and] 5. International customs rules and regulations study. [25%].

- Design and conduct extensive research using MRA ([Market Research Association]), Knowledge Storm and Simmons Symmetrical and other professional marketing data sources. Create competitive analysis such as S.W.O.T. [Strengths-Weaknesses-Opportunities-Threats] for clients, prospective clients and competitors. [15%].

- Manage, analyze and interpret data via statistical model using sophisticated decision software such as SAS (Statistic Analysis Software), Crystal Ball, Decision Tree, Microsoft Access and Marketing Pro. [15%].

- Assist company executives to problem solve in areas such as strategy, forecasting, resource allocation, facilities layout, inventory control, personnel schedules, supply chain management system, and distributions system by identifying key issues and supplying professional knowledge, allowing executives to formulate the most elegant solutions possible. [15%].

- Coordinate international supplier's activities and use project management software (Project Management Pro and Microsoft Access) to control product and raw material movement, among other projects. [05%].

- Using statistic/accounting tools for cost control like Peach Tree Pro and pricing model for profit estimation and budget control. [05%].

Neither this information, which is the most comprehensive listing of duties in the record of proceeding, nor any other evidence in the record establishes that the beneficiary would in fact be employed as a market research analyst. The *Handbook* indicates that a substantial component of market research analysis is "devis[ing] methods and procedures for obtaining the data" needed to statistically predict future sales, gather data on competitors, and analyze prices, sales, and methods of marketing and distribution. In contrast, the market research tasks related in the above description of duties appear to be heavily reliant on information developed by off-the-shelf software applications or provided by a marketing information service. To the

extent that they are presented in the record, these tasks are not indicative of the type of highly specialized knowledge – often at a master's degree level - that the *Handbook* indicates a market research analyst must possess and apply.

The AAO accorded decisive evidentiary weight to the facts above and also to the fact that the petitioner's job announcements for the proffered position specified only a requirement for a bachelor's degree in business administration, which is not a degree in a specific specialty. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988)

Because the evidence of record does not establish that the proffered position is one that normally requires at least a bachelor's degree, or its equivalent in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*). Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

Factors often considered by CIS when determining the industry standard 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." *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 record of proceeding contains no such evidence.

The AAO also finds that the evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*2*), which provides that "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." Likewise, the AAO finds that the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*4*) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence of record does not demonstrate that the position is so complex or unique, or that the proposed duties are so complex and specialized.

Finally, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty. As the record demonstrates that this is the first time that the proffered position is being offered, this criterion is not a factor. The petitioner has not yet had the opportunity to establish a relevant history of recruiting and hiring.

Because the petitioner has not established that the proffered position is a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.