

Information deleted to
prevent
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D2



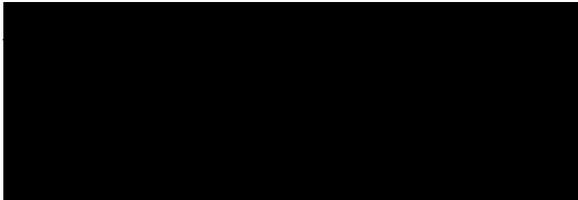
APR 14 2004

FILE: EAC 03 093 52053 Office: VERMONT SERVICE CENTER Date:

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 corporation engaged in the import/export of general goods. In order to employ the beneficiary 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 two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal, counsel contends that the director's decision was erroneous and that the petition should have been granted. For the reasons discussed below, the AAO has determined that the director's decision to deny the petition was correct. The AAO based its decision on its consideration of the entire record of proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B (with its annotations by counsel), counsel's June 4, 2003 letter entitled "Notice of Appeal Statement," and the documentation submitted with that letter (that is, four pages regarding the World Education Services, Inc. (WES) academic evaluation report).

The first issue to be addressed is the failure of the evidence to establish a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

On the Form I-129, the petitioner described the proposed duties as follows:

Research market conditions and trends in NJ, NY, and nationwide in America to determine which goods are to be imported from overseas and sell [sic], and to establish and develop marketing strategies.

The letter of support that the petitioner submitted with the Form I-129 described the proposed duties in exactly the same language as used in the Form I-129. Stating that the information about the proffered position was inadequate, the RFE included this request for more detailed information about the proposed duties:

Please provide a statement that specifically describes each project that the beneficiary will be involved in during the next year, to include the specific marketing methodologies to be utilized by the beneficiary[;] the type, size, and location of the population/industry targets to be studied[;] [and] the final format in which the research is to be presented and the ultimate recipient of that information. In addition, please provide a comprehensive business plan for your organization and identify how each of the beneficiary’s specific research projects will further enhance your ability to reach your short-term and long-term business objectives.

The petitioner’s letter of reply to the RFE included this information about the proposed duties:

- The Beneficiary’s JOB DESCRIPTION:

Research and gather data on U.S. and Asia market trends to predict potential sales. Conduct analysis of conditions affecting these markets and recommend cost effective operations of minimizing costs, increasing sales, and importing and exporting.

Plan, design, and develop strategies for pricing and effective marketing techniques based on research of industry-wide fashion trends, customer preferences and demands. Make appropriate recommendations based on assessment of research findings for changes or modifications of products or marketing strategies.

An attachment to the petitioner's RFE reply letter restated the proposed duties in terms of the daily percentages of time they would require:

Percentage of Time Spent Daily for Each of Beneficiary's Proposed Duties

<u>Job Duty</u>	<u>Percentage</u>
Research & gather data on U.S. and Asia market trends	25%
Conduct analyses of conditions affecting markets to recommend cost effective operations of minimizing costs, increasing sales, import/export	30%
Conduct analyses & assessment of research findings to make appropriate recommendations for modifications of products and marketing strategies	20%
Plan, design, develop strategies for pricing & effective marketing techniques	25%

With regard to the business context in which the proposed duties would be performed, the letter asserts that the market research analyst would play a key role in the petitioner's goal "to expand further its rapidly growing business, specifically further infiltration of overseas markets in Asia."

The petitioner's Marketing Strategy Summary document states that the petitioner engages in the import and wholesale of "various beauty supplies and accessories," that it distributes its goods to about 1,000 retail stores in the United States and Asia, and that it experiences increases of "at least 30% in sales profits annually." This document also asserts that the petitioner intends to expand its product line, increase its customer base, and further penetrate the overseas markets. While the thrust of this document is the importance of the proffered position to the petitioner's marketing goals and strategy, it provides no concrete details about the specific tasks that would engage the beneficiary.

The evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). This provision assigns specialty occupation status to those positions for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the positions' duties.

The AAO disagrees with the suggestion in the director's decision that market research analyst positions are incompatible with the petitioner's industry. The AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. As indicated in this excerpt from the section on the employment of market research analysts in the 2004-2005 Internet edition of the *Handbook*, the *Handbook* indicates that, although they are not the usual employers, firms in the petitioner's industry may be among the employers of market research analysts:

Market and survey researchers held about a total of 155,000 jobs in 2002. Most of these jobs were held by market research analysts, who held 135,000 jobs. Private industry provided about 97 percent of salaried market research analyst jobs. Because of the applicability of market research to many industries, market research analysts are employed in most industries. The industries which employ the largest number of market research analysts are 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.

However, even after the RFE's effort to obtain more concrete information, the duties are too generally and generically described to establish that they comprise an authentic market research analyst position, or that their performance would require the beneficiary to possess and apply at least a bachelor's degree level of highly specialized knowledge in a specific specialty. The AAO also finds that the information about the proffered position and its duties is too vague and abstract to support the director's finding of an amalgam of management analyst and marketing management duties. Without more useful documentation of the day-to-day services the beneficiary will be providing to the company, the AAO cannot analyze whether the beneficiary will be performing the duties of a market research analyst.

It is also noted that the record's copy of the petitioner's job announcement states, "The ideal candidate should have a minimum of a bachelor's degree in business." This generalized educational requirement is inconsistent with a specialty occupation, which is characterized by the requirement of a degree in a specific specialty that is closely related to the position's duties. 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. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

It is also noted that the six Internet advertisements have no probative value. They are too few to establish an industry-wide practice. They do not all specify a requirement of at least a baccalaureate degree in a specific specialty. Furthermore, the information about job duties, for both the proffered position and the advertised positions, is too generalized to provide an accurate basis for comparing the performance requirements of the proffered position with those of the advertised positions.

Thus, the petitioner has failed to prove that the position is one which normally requires a degree under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner has not satisfied either of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As already discussed, the information about the proposed duties is too general to align the proffered position with any occupation for which the *Handbook* reports employers normally requiring at least a bachelor's degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry. Finally, for the reasons already cited, the AAO discounted the job vacancy advertisements from other firms.

Also, 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." The evidence of record on the proffered position and its duties is too general and abstract to demonstrate the complexity or uniqueness required by this criterion.

Next, 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 – is not a factor in this proceeding, as the position is being offered for the first time.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As the petitioner failed to provide concrete information about the specific day-to-day tasks that the beneficiary would perform and about the specific skills and competencies that he would need to apply, there is no basis in the record for concluding that the duties are as specialized and complex as this criterion requires.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), the AAO shall not disturb the director's denial of the petition on the basis of the specialty occupation issue.

The director was also correct in his decision to deny the petition on the ground that petitioner failed to establish that the beneficiary is qualified to serve in a specific specialty in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

On this issue, the director's decision states only:

In addition, although not addressed in the [RFE], a review of the record shows that it contains no evidence verifying that the beneficiary's education and work experience are equivalent to at least a baccalaureate degree in a related field.

Although the beneficiary qualification issue was not raised until the director's decision, counsel has been given full opportunity to address the issue on appeal.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The WES academic evaluation was analyzed under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). However, the AAO discounted this report because it is not accompanied by the documentary evidence upon which it is based. Without this evidence, the AAO cannot gauge the sufficiency of the material upon which the report is based or the accuracy of the WES determination. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Also, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

However, even if the WES conclusion were acceptable, it would not establish that the beneficiary is qualified to serve in the type of specialty occupation asserted by the petitioner. WES opined that, by virtue of a foreign bachelor of science degree in physics, the beneficiary holds the equivalent of a "[b]achelor's degree in physics from a regionally accredited [U.S.] institution." As indicated by the statutory and regulatory framework

above, to qualify a beneficiary for service in a particular specialty occupation, a degree must be “in the specialty,” that is, in a specific specialty that is required to perform the pertinent occupation. The evidence of record does not establish that a degree in physics is such a degree. In fact, on its face, a degree in physics does not signify the attainment of any body of highly specialized knowledge that would be necessary to perform what the petitioner describes as a market research analyst position.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary’s credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual’s training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

With the discounting of the WES evaluation, only section 5 of 8 C.F.R. § 214.2(h)(4)(iii)(D) is relevant to the evidence of record. Counsel focuses on what he describes as the beneficiary’s over 12 years of work experience as a market research analyst for an international import/export company. (Counsel’s appeal statement, at page 1.) However, the evidence of record contains insufficient evidence for CIS to translate the beneficiary’s work experience into educational credit.

The evidence of record contains only skeletal documentation of the beneficiary’s work experience, namely, a January 2003 letter from a Seoul, Korea trading company which stated that, from January 1990 to October 2002, the beneficiary served as a market research analyst performing the following duties:

Research market conditions and trends in Korea, China, America, and other countries to determine which goods are to be imported/exported from/to overseas and sell [sic], and to establish and develop marketing strategies.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks.

Per this regulation, the petitioner must have "clearly demonstrated" (1) that the beneficiary's training and/or work experience included both the theoretical and practical application of specialized knowledge required by the specialty occupation, and (2) that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

This regulation also requires the petitioner to have "clearly demonstrated" the beneficiary alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The slim documentation of the beneficiary's work history does not meet the requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) that the record clearly demonstrate that (1) "the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation" and (2) "the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation."

Finally, there is no evidence relating to the type of professional recognition required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (i) to (v).

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

For the reasons just discussed, the director was also correct in denying the petition because the petitioner had not established that beneficiary is qualified to serve in a specialty occupation.

Because the director was correct in denying the petition for failure to establish the proffered position as a specialty occupation, and also for failure to establish that the beneficiary is qualified to serve in a pertinent specialty occupation, 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.