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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
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Services



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FILE: LIN 02 020 50389 Office: NEBRASKA SERVICE CENTER Date:

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

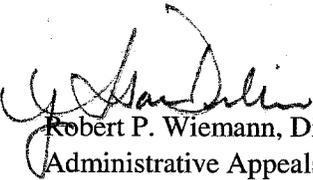
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 an importer and exporter of seafood that seeks to employ the beneficiary as a market and business 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 because the proffered position is not a specialty occupation. On appeal, counsel submits additional information.

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.

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 market and business analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 25, 2001 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: researching economic trends; making and recommending short-term and long-term price decisions; determining potential sales and developing research methods on competitors; adopting statistics pertaining to foreign market changes; compiling relevant information; researching data and analyzing quality of the petitioner's frozen fish products; and contacting appropriate government departments. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration.

The director found that the proffered position was not a specialty occupation because the job duties are not so specialized and complex as to require a baccalaureate degree 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 proffered position is that of a market analyst, a position that qualifies as a specialty occupation. Counsel also states that the proposed duties, which include establishing short-term and long-term pricing policy, are so complex that a baccalaureate degree in business or economics and related experience are required.

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 Department of Labor's (DOL) *Occupational Outlook Handbook (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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of a market research analyst.

The first reason why the AAO is not persuaded to classify the offered position as a market research analyst position concerns the particular duties of the offered position compared with the duties of a typical market research analyst position. At page 239 of the *Handbook*, 2002-2003 edition, the DOL states: "[m]arket, or marketing, research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. . . ." In this case, although the proffered position requires some market analysis, the duties described by the petitioner are primarily those of a marketing manager for reasons that will be discussed herein.

The second reason why the AAO is not persuaded to classify the offered position as a market research analyst position relates to the type of industry in which the beneficiary would be employed. Information in the

Handbook, at page 240, provides insight into the types of industries in which market research analysts are normally found. According to the DOL:

Private industry provided about 9 out of 10 jobs for salaried workers, particularly economic and marketing research firms, management consulting firms, banks, securities and commodities brokers, and computer and data processing companies.

Although the list of private industry employers is not all-inclusive, the DOL's description of a market research analyst's job implies that these types of positions are found within large firms or corporations, such as banks or worldwide pharmaceutical companies.

The record indicates that the petitioner, which imports and exports seafood, has one employee and a gross annual income of \$4,475,254. The business of importing and exporting seafood is not within the DOL's list of industries that typically require the services of a full-time individual who performs only market research analyst duties. For these reasons, the AAO is not persuaded to label the offered position as a market research analyst position.

An analysis of the beneficiary's proposed duties reveals that the job being offered is similar to the job of a marketing manager. In its *Handbook* at page 27, the DOL describes the job of a marketing manager, in part, as follows:

Marketing managers develop the firm's detailed marketing strategy. . . . [T]hey determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets. . . . Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development

A review of the DOL's *Handbook* at page 28 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in marketing managerial jobs. A wide range of educational backgrounds is suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, most marketing management positions are filled by promoting experienced staff or related professional or technical personnel. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for positions related to market research. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. One of the advertised positions is for a market research manager for a leading hybrid seed company, with duties that entail managing customer services and supporting market research, advertising, and public relations. Another of the advertised positions is for a marketing specialist for a manufacturer of test and measurement equipment, with duties that entail working with a diverse group of associates. The proffered position does not parallel the advertised positions, nor is petitioner's industry similar to the industries described in the advertised positions. 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 has, thus, 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. The record indicates that the petitioner currently has only one employee. Furthermore, although the petitioner was established in 1994, the record does not contain any evidence of the petitioner’s past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to 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 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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary’s qualifications need not be examined further in this proceeding.

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.