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**U.S. Citizenship
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Services**



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FILE: WAC 03 015 50386 Office: CALIFORNIA SERVICE CENTER Date: *JUL 28 2010*

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.

for
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 The decision of the director will be withdrawn and the matter will be remanded to him for further consideration.

The petitioner is a photography studio that seeks to employ the beneficiary as an operations and market 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional documentation.

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 record of proceeding before the AAO contains, in part: (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 an operations and market analyst. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration or marketing management.

The director found that the beneficiary was not qualified for the proffered position because the petitioner has not demonstrated that the beneficiary holds a master's degree in the 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 a market research analyst position is a master's degree. The director further found that the beneficiary's transcripts do not show that he graduated from a master's level program or was awarded such a degree.

On appeal, counsel states, in part, that the proffered position is an entry-level position, and therefore the beneficiary is qualified to fill this position because he holds a baccalaureate degree in business administration with a major in marketing management. Counsel submits a "Certification" issued by a Filipino institution to demonstrate that the beneficiary holds a Bachelor of Science degree in business administration with a major in marketing management.

The petitioner, which is a photography business, has not demonstrated that the proffered position is that of an operations research analyst or a market research analyst. It is noted that in its *Handbook*, 2004-2005 edition, the DOL finds that operations research analysts and market research analysts are employed primarily by the following organizations: telecommunications companies; aerospace manufacturers; computer systems design firms; financial institutions; insurance carriers; engineering and management services firms; Federal and State governments; management, scientific, and technical consulting firms; software publishers; securities and commodities brokers; and advertising and related firms. It is also noted that none of the beneficiary's job duties entails the level of responsibility of an operations research analyst or a market research analyst. Rather, the proffered position is primarily that of a marketing manager.

Upon review of the record, the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position, which is similar to that of a marketing manager. The petition may not be approved, however, because the director has not determined whether the proffered position is a specialty occupation. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.