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U.S. Citizenship  
and Immigration  
Services



D2

FILE: EAC 03 049 52584 Office: VERMONT SERVICE CENTER Date: JUN 02 2004

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 a real estate development company that seeks to employ the beneficiary as a part-time market research analyst. The petitioner, therefore, 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 does not appear to be a specialty occupation. On appeal, counsel asserts that the director's decision was arbitrary and capricious and submits additional documentation.

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 petitioner's letter of support; (3) the director's request for additional evidence; (4) the petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 research analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the beneficiary would work in areas including the following: analyzing statistical data on past transactions to predict future real estate business transactions, researching trends in the real estate markets in New York and New Jersey, gathering data on the petitioner's competitors, devising methods for obtaining data, and conducting surveys to assess client's preferences, and conducting research on public attitudes toward real estate investments. The petitioner also stated that the beneficiary's position would have a special focus on a newly emerging Korean-American real estate market in the United States. The petitioner indicated in its letter of support that the position required a baccalaureate degree in economics, marketing, or business administration.

The director found that the proffered position was not a specialty occupation and stated that the petitioner had not established that its business required the services of professional market research analyst or that firms similar to the petitioner required a baccalaureate degree in a specific specialty for entry into the position. 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, the petitioner states that the director's decision is arbitrary, capricious, and an abuse of discretion because the director relied on irrelevant factors, such as the size of the petitioner, the salary offered by the petitioner, and the fact that the petitioner has not previously hired a professional market research analyst. Counsel submits an position evaluation prepared by Dr. James Fisher, Saint Louis University; letters from real estate companies, and a copy of the Department of Labor's *Dictionary of Occupational Titles (DOT)* description of market research analyst.

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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to market research analysts, the 2000-2003 edition of the *Handbook* states on page 240 that graduate education is required for many private sector economist and market and survey research jobs. It further states that in addition to courses in business, marketing and consumer behavior, marketing majors should take other liberal arts and social sciences courses, including economics,

psychology, English and sociology. The *Handbook* clearly indicates that market researchers with bachelor degrees usually qualify for most entry-level positions as a research assistant, administrative or management trainee, marketing interviewer, or any of a number of professional sales jobs. In addition the *Handbook* indicates that a master's degree usually is required for more responsible research and administrative positions. Thus, employers of research analysts would require that a candidate for a marketing research position possess a bachelor's degree or higher in marketing for entry into the position. As such, marketing analyst positions are specialty occupations. The *Handbook* information also corroborates the expert opinion evaluation submitted by the petitioner on appeal from [REDACTED] St. Louis University.

What is less clear in this proceeding is whether the proffered position is a market research analyst position. The critical element in examining whether the proffered position is a specialty occupation is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. With regard to the instant petition, the record is devoid of specific information on the present marketing strategy or marketing operations of the petitioner. In addition, the duties listed by the petitioner appear generic in nature. For example, one of the beneficiary's duties is listed as "providing the petitioner with the information needed to make the petitioner's business judgment". The record is devoid of any further information as to the type of information, the type of research, or volume of work necessary to perform the duties of the proffered position. Without more persuasive evidence, the petitioner has not established that the proffered position in fact is a marketing research analyst. Without more persuasive evidence, the petitioner has not established that a baccalaureate degree in a specific specialty is required for entry into the proffered position.

With regard to parallel positions in similar firms, on appeal, the petitioner submits three letters from three companies in the New York area that all identified themselves as real estate companies. Two of the letter writers stated that they require a bachelor's degree in economics, marketing or a related field for their marketing research analyst positions, while the third correspondent did not identify a specific degree requirement. All three submitted copies of baccalaureate diplomas for employees whom they identified as their market research analysts. These diplomas were either in the field of economics or business administration. This documentation is not found persuasive for two reasons. First, the record is not clear that all three businesses have the same business focus as the petitioner, namely, Korean-American clients, or that all three businesses have similar marketing strategies or business volume. In addition, the letter writers provided no documentary evidence that the individuals identified on the diplomas are actually employees of the respective companies. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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 petitioner stated that the position was new, and that it presently has one employee, the owner who is a licensed real estate broker. Without more persuasive evidence, the petitioner cannot meet this criterion.

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. As stated previously, the duties of the position are generic in nature. To the extent that they are depicted in the record, the duties of the position appear routine for many job positions at very elementary levels of survey work, marketing research, and other subcategories of business administration. Based on the generic nature of the duties, the record is not clear that the duties of the position require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. In addition, the petitioner provided no substantive documentation on its present business operations or the complexity of doing market research in the one area listed as the source of the petitioner's future financial growth, namely the emerging Korean-American real estate market. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 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.