

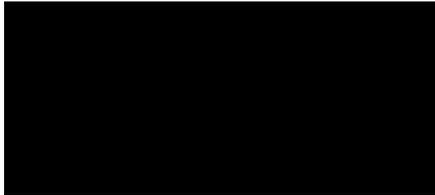
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**U.S. Citizenship
and Immigration
Services**

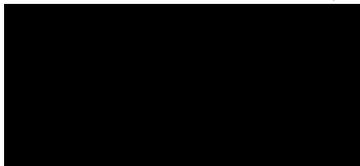


FILE: EAC 02 258 52947 Office: VERMONT SERVICE CENTER Date: **MAR 03 2004**

IN RE: Petitioner: 
Beneficiary:

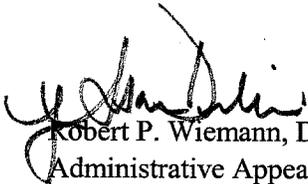
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.


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, a travel agency engaged in local, nationwide, and international travel markets, seeks 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 the basis that the proffered position is not a specialty occupation. On appeal, a brief and additional documents are presented.

The petitioner's Form I-129 identified the proposed duties as:

Researching travel/tour market conditions in the United States and Internationally (Europe, Asia, and South America) to expand potential routes and marketing. Analyzing statistical data, prices, routes, method of marketing and tour/travel trends for future marketing strata (sic).

Counsel's response to the request for evidence (RFE) divided the duties into three segments.

Data collection on "travel/tour/vacation markets (local, domestically, and international market)," would include collection, research, and analysis of the following with regard to pleasure travel, group tours, business travel, and vacation packages:

Destination, point of interest, hotel accommodation, transportation (ship, train, air plane), kind of recreation, vacation package, business pleasure trip accommodation, foreign money exchange rate, security of travelers, history of foreign country, history about specific point of interest, weather, expense and other costs, special events, seasonal events, competitor's price.

According to the RFE reply, the second major aspect of the proposed duties would be research and analysis of the aforementioned data.

The third aspect duties presented in the RFE reply would be development of marketing strategy "for future travel/tour/vacation market for the purpose of expanding our business."

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. § 24.2(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) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the RFE, including attached documents; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

As discussed below, review of the entire record establishes that 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, and the director's decision should not be disturbed.

The evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), that is, the proffered position's being one whose normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the duties of the position. To the extent that it is described in the record, the proffered position is not identifiable as one requiring this criterion's degree or degree-equivalency credentials.

Next, the evidence of record has not satisfied the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) by establishing that a degree requirement is common to the industry in parallel positions among similar organizations.

Factors often considered by CIS when determining this criterion include: whether the Department of Labor's *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)).

In industry degree-requirement determinations, the AAO often consults the *Handbook* for its information about the duties and educational requirements of a wide range of occupations. Here, in conjunction with its consideration of all the information in the record about the proposed duties, the AAO consulted the 2002-2003 edition of the *Handbook*. As a result, the AAO found that, to the extent to which they are described, the duties do

not comprise a position for which there is an industry-wide entry requirement of a baccalaureate degree in any specific specialty.

While the evidence of record describes duties in general terms that comport with general duties that the *Handbook* describes for market research analysts, the evidence of record does not present specific details about any of the analytical skills or market-research techniques that the beneficiary would have to apply. Accordingly, the AAO finds that the petitioner has not demonstrated that the beneficiary would actually perform the day-to-day specific tasks that characterize market research analyst positions.

The AAO also notes that, even if the beneficiary's generally described duties merited classification as those of an authentic market research analyst, the *Handbook* indicates that firms employing persons for entry-level market research analyst positions generally require a bachelor's degree, but not, as required by the pertinent regulation, a bachelor's degree in any specific specialty related to the position.

Next, the record contains no evidence in the nature of affidavits from firms or individuals in the industry to attest that such firms "routinely employ and recruit only degreed individuals" in positions like the one proposed here.

Finally, the advertisements that counsel presents have no persuasive impact. The firms advertising for market analyst positions are involved in different businesses than the petitioner, and they are focused on different types of markets than the petitioner's. This means that the advertisements do not relate to positions that are either parallel to the one proffered by the instant petitioner, or in organizations that are similar to the petitioner. Accordingly, the advertisements are irrelevant to the first prong at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2). Furthermore, the advertisements are too few to establish an industry-wide standard.

The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), that is, as one that is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The position is depicted in general terms; the description does not convey a degree of complexity or uniqueness that necessitates hiring an individual with at least a bachelor's degree in a specific specialty.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The past-hiring-practice criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3) is not a factor, as the petitioner presented no evidence about this criterion, and it appears that the position is being offered for the first time.

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. The general terms by which the duties are depicted in the record do not convey such complexity or specialization. In fact, the duties are presented in abstract terms, such as data collection, research and analysis, and market strategy development, that invite speculation about how complex or specialized the actual performance of the position would be. 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.

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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.