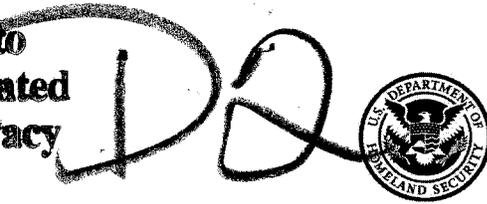


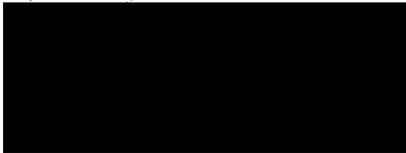
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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



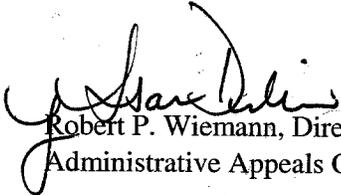
FILE: EAC 02 094 50271 Office: VERMONT SERVICE CENTER Date: **MAR 11 2004**

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:
[Redacted]

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 wholesale diamonds and fine jewelry company that seeks to employ the beneficiary as a marketing 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 is not a specialty occupation. On appeal, counsel submits an addendum to Form I-290B with additional comments. Citizenship and Immigration Services (CIS) notes that, although counsel indicated that a brief would be submitted to the AAO within 30 days of filing the appeal, as of this date, the record does not contain any additional evidence. Therefore, the record is considered complete, and the AAO shall render a decision based upon the evidence before it at the present time.

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.

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 letter, dated May 20, 2002, that responds 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 marketing analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's May 20, 2002 letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail: designing and executing marketing research projects to assure objective, customer-driven decision making within the company; conducting annual product development research using Quality Function Development (QFD) methods; conducting and coordinating research to determine feasibility of selling products in new markets; providing programs management with information on program needs; conducting primary and secondary research projects to determine customer satisfaction levels, market conditions; and supporting and assisting the manager through comprehensive research analysis in all aspects of the business. In the petitioner's response to the director's request for further evidence, the petitioner indicated that the beneficiary would spend 75 per cent of her time doing marketing research, and the remaining 25 per cent of her time would be doing paperwork, and reporting and coordinating with management.

The director found that the proffered position was not a specialty occupation and referred to the description of marketing manager in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2000-2001 edition. Based on this document, the director noted that the position of marketing analyst is viewed as professional and required a graduate degree. The director then described the petitioner as a small company and further stated that it did not appear that the nature of the petitioner's business was such that it required the services of a professional marketing analyst. 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 that the size of the petitioner's business operation is irrelevant, and further states that the petitioner is a bona fide commercial entity founded in 1986. Counsel also asserts that a marketing analyst is a specialty occupation.

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. The *Handbook* has two distinct classifications involving market analysis: marketing managers and market research analysts. Although the initial petition identifies the position as a marketing analyst, the petitioner described the proffered position as contained within the *Handbook's* classification of advertising, marketing, promotions, public relations, and sales managers. However, the petitioner provided no substantive information as to any subordinates that the beneficiary would manage or supervise as a marketing manager. The

director in turn examined the petition using the *Handbook* classification of economist/market research analyst. For purposes of this proceeding, the AAO will examine the proffered position as a market research analyst.

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 research marketing position possess a bachelor degree in marketing or higher for entry into the position. As such marketing analyst positions are specialty occupations.

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 or future marketing strategy or current marketing operations of the petitioner. For example, although the petitioner identified one of the beneficiary's duty as conducting a QFD process for an annual product development review, the record is devoid of any information on the application of such a process to the petitioner's business of selling diamonds and antique jewelry. Without more persuasive evidence, the petitioner has not established that the proffered position in fact is a marketing research analyst.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation regarding academic credentials required for other marketing research analysts in similar firms. It did submit four letters from other individuals who own or operate jewelry businesses. These letters are not viewed as probative documentation for parallel positions in similar firms. None of the letter-writers provides any information on the academic credentials of any market research manager position within his or her respective firm. In addition, while the letter from Mr. Shalom Bronstein states that a firm with gross revenues of five million dollars and worldwide clients would require a marketing research analyst to possess a bachelor's degree in marketing or a related field, Mr. Bronstein provides no further documentation to support this assertion. 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 in its response to the director's request for further evidence that it had no other individuals currently employed in the proffered position. Therefore the petitioner cannot meet this criteria.

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. While the petitioner estimated gross revenues of \$5 million in the original petition, this assertion would not substantiate the specialized or complex nature of the proffered position. Furthermore the record is devoid of any information on the volume, complexity, or staff structure of the petitioner's business operations. Although the petitioner provided a list of jewelry shows and auctions in which it participates, the relationship between this list and the beneficiary's duties is not established in the record. 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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position, if the position had been determined to be a specialty occupation. The petitioner did not submit an educational equivalency document that established the beneficiary's foreign degree in psychology was the equivalent of a U.S. baccalaureate from an accredited U.S. educational institution in a specific specialty relevant to the proffered position. In addition, if the petitioner intended to establish this educational equivalency based on both the beneficiary's educational and professional work experience, the documentary evidence in the record is insufficient to establish the regulatory criteria with regard to this issue. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications further.

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.