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U.S. Citizenship
and Immigration
Services

D2

FILE: EAC 02 074 50302 Office: VERMONT SERVICE CENTER Date: **MAY 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.

Mari Johnson

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 grocery distributor that seeks to employ the beneficiary as a marketing 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 a brief.

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 marketing analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 10, 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: conducting research and analyzing and reporting market data regarding potential sales of the petitioner's products; participating in trade shows; updating the petitioner's website and resolving problems with mail and Internet orders; and preparing financial reports. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, marketing, or a related field.

The director found that the proffered position was not a specialty occupation, because 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 since the beneficiary has been employed by the petitioner in the same position since 1997, the instant petition should be approved. Counsel also contends that the proffered position requires the specialized knowledge associated with a baccalaureate degree in marketing, and that such degree is a standard requirement among grocery distributors for parallel positions.

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 notes that some of the job duties listed on the record contains that appear to pertain to the position of market research analyst, namely those involving market research and the presentation of findings. However, the job description is vague and brief and does not lend itself to a definitive assessment. According to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, market research analysts focus on devising methods of gathering consumer and competitor data and on analyzing the statistical data gathered. The petitioner stated that the beneficiary would "conduct research," but there is no detailed information regarding the scope or level of responsibility this would entail. The *Handbook* notes that individuals other than market research analysts usually conduct surveys. Moreover, half of the duties listed clearly do not pertain to the position of market research analyst. The preparation of financial reports and the maintenance of the petitioner's website, for example, would not require the specialized knowledge associated with a bachelor's degree in marketing. The job description on the record does not make clear what the beneficiary's specific duties would be; thus, the AAO cannot determine if this position is indeed that of a market research analyst. Additionally, 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.

Regarding parallel positions in the petitioner's industry, the opinion letter from a competitor of the petitioner's does not constitute evidence that a bachelor's degree in marketing is the minimum requirement for entry into the proffered position. The record also does not include any evidence from professional associations regarding an industry standard.

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS previously approved a similar petition for this beneficiary. Each nonimmigrant petition is a separate proceeding with a separate record, however. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether

the position offered in the prior case was similar to the position in the instant petition. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous.

CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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, it appears that the beneficiary has passed the six-year maximum time limit available for H-1B status. The petitioner notes that it has employed the beneficiary in the same position since May 1997, and the instant position seeks to extend the beneficiary's H-1B status. The beneficiary would have reached the six-year limit in May 2003, and is not currently eligible for further extensions. As the appeal is dismissed on other grounds, though, the AAO will not discuss this issue in further detail.

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.