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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 068 50003 Office: CALIFORNIA SERVICE CENTER Date: MAY 04 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.

Mari Johnson

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 appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturer and distributor of plastics and packaging materials that 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 because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(2) of the Immigration and Nationality Act (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 a market research analyst. The petitioner indicated that it requires a baccalaureate degree in management or a related field for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to the degree in a specialty required by the occupation. The director stated that a master's degree is required for entry into this field and that the beneficiary only possessed a bachelor's degree. On appeal, counsel states that there is no requirement for a master's degree, and that the industry standard is that a bachelor's degree is suitable for entry into the occupation.

Counsel asserts on appeal that the director was incorrect in stating that a master's degree is required for entry into the market research field, and that a bachelor's degree would suffice. The regulations, however, clearly contemplate that some occupations require a higher-level degree than a baccalaureate degree. In establishing the criteria for a specialty occupation, 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) states, "A baccalaureate *or higher degree or its equivalent is normally the minimum requirement for entry* into the particular position." (Emphasis added). This acknowledges that in some cases, a degree beyond a bachelor's degree would be the minimum prerequisite for entry into a position.

The Department of Labor's *Occupational Outlook Handbook (Handbook)* states, "Graduate education is required for many private sector economist and market and survey research jobs." Counsel asserts that this means that a bachelor's degree is the minimum requirement for entry into the occupations. The *Handbook* also states:

Whether working in government, industry, research organizations, marketing, or consulting firms, economists and market and survey researchers with bachelor degrees usually qualify for most entry-level positions as a research assistant, administrative or management trainee, marketing interviewer, or any number of professional sales jobs. A master's degree is required to qualify for more responsible research and administrative positions.

The proffered position is not for a research assistant, trainee or interviewer, but for a market research analyst, which would have to be included in the definition of "more responsible research . . . positions."

Counsel provides information from several sources, which state that a bachelor's degree is required for employment as a market research analyst. One of the sources stated that a bachelor's or a master's degree is required. This does not provide information about when one degree would be required over the other. In addition, this information is from several websites regarding employment in California, and this does not establish a universal standard.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform a specialty occupation that requires a master's degree in economics, business administration, marketing, statistics, or a closely related discipline. The beneficiary does not hold a degree from an accredited U.S. college or university in any field of study. The beneficiary's foreign degree was determined to be equivalent to a baccalaureate degree from a U.S. college or university in management. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The documentation on record does not establish equivalence to a master's degree in any of the specific areas required for the specialty occupation. The only indication of the beneficiary's prior work experience is her previous employer's letter, which lists a job title, but no duties. There is no way of determining whether the position included the theoretical and practical application of specialized knowledge required by the specialty.

Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is market research analysis.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. No evidence is on record that any "recognized authorities" evaluated the beneficiary's experience in accordance with 8 C.F.R. § 214.2(h)(4)(ii)(C)(4).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. 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.