



U.S. Citizenship
and Immigration
Services

D2



FILE: EAC 01 066 52632 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

MAY 17 2004

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:



identifying such sections as
**prevent clearly unwarranted
invasion of personal privacy**

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

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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 travel and tour agency that seeks to employ the beneficiary as a business 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 and other 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 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 business analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 8, 2000 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 collecting and analyzing data on market trends in the travel industry in order to identify and develop marketing strategies to increase the petitioner's market share. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in marketing.

The director determined that the proffered position was not a specialty occupation. The director found 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 proffered position is so specialized and complex as to be associated with a baccalaureate level education. Counsel also asserts that a bachelor's degree is a common entry requirement in the petitioner's industry. The AAO will examine the evidence in light of the second and fourth criteria described above, as these are the points highlighted by counsel on appeal.

The AAO turns first to the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2): 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 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)).

The AAO notes that although the job title of the instant position is business analyst, and counsel characterizes the position as that of a market research analyst, the position appears to be a combination of a market research analyst and a marketing manager. The job description on the record does not clarify how much time the beneficiary would spend on these various facets of the marketing process; thus, the AAO cannot definitively determine how to categorize the instant position. A review of the market research analyst description in the *Handbook* reveals that a master's degree in marketing or a related field is the minimum requirement for many private sector jobs. A bachelor's degree appears to be sufficient only for entry-level positions, which would not include the instant position. Regarding the educational requirements for marketing managers, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, in a specific specialty, is a minimum requirement.

Regarding parallel positions in the petitioner's industry, the petitioner submitted a letter from Dr. [REDACTED] an assistant professor of management at Rider University, in which Dr. [REDACTED] states that a bachelor's degree in business administration, economics, or marketing would be appropriate preparation for entry into the position of marketing analyst. The record also contains three letters from the presidents of other travel agencies who state that it is becoming essential for travel agencies in New York to hire marketing analysts with a bachelor's degree in economics, commerce, marketing, or business administration. These letters, however, do not constitute evidence from professional associations regarding an industry standard.

The petitioner also submitted a copy of the *New York Times*, with a job posting for a software engineer circled. This advertisement appears to have no relevance to the instant petition. The record does not contain documentation to support the complexity or uniqueness of the proffered position; thus, the petitioner has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now 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. On appeal, counsel lists the proposed duties and asserts that these are complex. Simply going on record, however, without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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. Beyond the decision of the director, it is not apparent from the record that the beneficiary would be qualified to perform the duties of a specialty occupation. His Indian college degree was evaluated as being equivalent to three years of study at a U.S. university, and the record does not establish equivalence to a bachelor's degree in any field. For this additional reason, the petition may not be approved.

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.