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U.S. Citizenship
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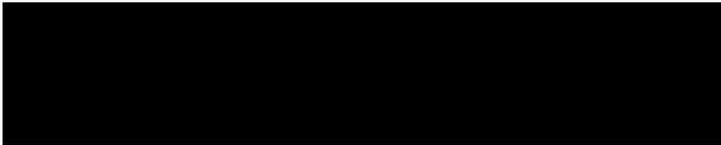
FILE: WAC 03 054 50518 Office: CALIFORNIA SERVICE CENTER Date:

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:



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.

Marif Jensen

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 an import/export company and wholesaler of auto body replacement parts and materials. It seeks to employ the beneficiary as a part-time market research 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 because the petitioner had not established that similar businesses required the long-term services of a market research analyst. On appeal, counsel and the petitioner assert that the director's decision is based on the size and nature of the petitioner's business, rather than on the complex nature of the duties of the position.

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 petitioner's letter of support dated November 14, 2002; (3) the director's request for additional evidence; (4) counsel's letter, dated December 17, 2002, that responds to the director's request; (5) the director's denial letter; and (6) 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. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the petitioner wished to create a Information technology marketing section to use web marketing for the promotion of the petitioner products and services. The beneficiary would research market conditions at the local, regional or national level to determine potential sales of products; establish research methodology and design format for data collection, such as surveys, opinion polls, or questionnaires; examine and analyze statistical data to forecast future marketing trends; design and develop web marketing tools such as an exchange link domain for internet marketing; gather data on competitors, and on customer preferences and buying habits; prepare reports on comprehensive market study of local industries for the petitioner's management; and determine the advisability of adding new lines of services, branches or otherwise diversifying the petitioner's operations. The petitioner indicated a bachelor's degree in marketing, business administration, economics, or other related discipline was required for entry into the position. In its response to the director's request for further evidence, counsel broke down the beneficiary's duties into three general areas of business and market research, interpretation and organization of results, and report preparation. Within these three areas, counsel provided more specific job duties, such as: assess the petitioner's physical inventory, movement of stock on hand items, and most frequent back-ordered merchandise; organize and maintain research data collected into written journals and computerized database; and prepare reports to management to apprise them which products are determined to be fast-moving items, which need regular replenishment, and which are slow-moving or non-moving products which may be offered to customers in bulk or on discount.

The director found that the position of market research analyst is a specialty occupation that requires a bachelor's degree for entry into the position; however, the director determined that the petitioner had not established that it was a normal business practice for businesses similar to the petitioner to retain the long-term services of a market research analyst and that the proffered position was not a bona fide position in a specialty occupation. The director primarily based this determination on the fact that the petitioner had not provided documentation that the types of duties to be performed in the proffered position were viewed as normal and customary requirements for parallel positions in similar organizations. 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, the petitioner refers to the Department of Labor's Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of marketing research analyst, and to the *O* Net Dictionary of Occupational Titles (DOT)*. Counsel finds that the duties outlined in these DOL documents and the duties outlined by the petitioner are analogous. Counsel also asserts that, although every retail business may not retain the services of a market research analyst, retailers may hire market research analysts to assist them with business progress or expansion.

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 2004-2005 edition of the *Handbook* also states that graduate education is required for many private sector economist and market and survey research 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's 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. 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 marketing strategy or marketing operations of the petitioner. It is also unclear as to whether the position entails setting up a new IT marketing section, as originally stated by the petitioner, or simply involves the maintenance of the current internet websites utilized to currently market the petitioner's products. In addition, while the petitioner is correct that the utilization of a market research analyst is not dependent on the size or nature of the business, the *Handbook* indicates that the industries which employ the largest number of market research analysts are management, scientific, and technical consulting firms, insurance carriers, computer systems design and related firms, software publishers, securities and commodities brokers, and advertising and related firms. 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 four job vacancy announcements for market research analysts. While all four job announcements required bachelor's degrees, two companies did not specify the field in which they required a baccalaureate degree. For example, the Viewsonic announcement stated that its minimum qualification was either a related bachelor of science degree, or equivalent work experience, while PBI Media-Infotech indicated that it required either a bachelor of arts or science, with preference for a master's in business administration or a master of science. As previously stated, 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. In addition, the four job announcements do not appear to be for parallel positions in companies similar to the petitioner. For example, the petitioner is a auto parts retailer, while PBI Media-InfoTech appears to be a media company. Another company, Viewsonic, is described in its website as a leading worldwide provider of advanced display technology with annual sales of 1 billion dollars. Without more persuasive evidence, the petitioner has 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 original petition that it wanted to focus on a new IT marketing section. In addition, the petitioner provided no documentation on any other staff members currently or previously employed as research market analysts. Therefore the petitioner cannot meet this criterion.

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. The duties appear to be routine with regard to positions involving sales and market research. Furthermore the record is devoid of any information on the current or projected complexity of the petitioner’s current internet business operations. 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.

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.