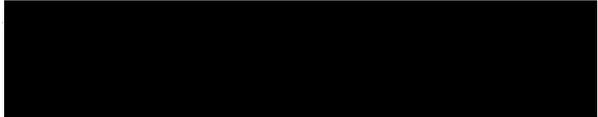




U.S. Citizenship
and Immigration
Services

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FILE: LIN 02 265 54522 Office: NEBRASKA SERVICE CENTER Date: **OCT 22 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 The director's decision will be withdrawn and the matter remanded to the director to determine whether the beneficiary qualifies to perform the duties of a specialty occupation.

The petitioner is involved in commercial real estate development on an international basis. It seeks to employ the beneficiary as a market research analyst, and endeavors to classify her 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 on the basis that the offered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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)(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.

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 proceedings before the AAO contains: (1) the Form I-129 petition 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) the Form I-290B with 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 was included with the I-129 petition, in response to the director’s request for evidence, and in counsel’s brief on appeal. According to this evidence the beneficiary would: research market conditions in local, regional, national, and international areas to identify potential commercial clients in the real estate market; apply theories and principles from marketing and management or business administration in establishing research methodology and designing format for data collection such as surveys, opinion polls or questionnaires; facilitate the development and implementation of market strategies; develop, maintain, and communicate competitive intelligence based on analysis of research on market conditions; interface with domestic and international customers to ascertain customer satisfaction in order to improve service; collect data on customer preferences to identify customer needs; and based on research prepare reports to management in order to formulate company policies in response to market conditions. The petitioner requires a minimum of a bachelor’s degree in marketing for entry into the offered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel indicates that the offered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). In support of that assertion counsel submits a brief and additional evidence.

The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. Though vaguely stated, the duties of the proffered position are essentially those performed by market research analysts. Upon review of the record, the petitioner has established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The *Handbook* notes that most employers in private industry generally seek individuals with a master’s degree in

business administration, marketing, statistics or a related discipline for market research analyst positions. The proffered position does, therefore, qualify as a specialty occupation.

The final issue to be considered is whether the beneficiary qualifies to perform the duties of a specialty occupation. The director's decision noted that the beneficiary possessed a bachelor's degree in marketing from Fudan University in China, and that she appeared, therefore, to be qualified to perform the duties of a specialty occupation. The record of proceeding does not, however, contain an evaluation of the beneficiary's foreign education to determine its equivalency to a degree earned from an accredited institution of higher education in the United States. Furthermore, it does not appear that the beneficiary would qualify to perform the duties of the offered position as most market research analyst positions require graduate level education. The director's decision shall accordingly be withdrawn, and the matter remanded to the director to determine whether the beneficiary is qualified to perform the duties of the offered position. The director may obtain such additional evidence as he deems necessary in rendering his decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. This matter is remanded to the director for entry of a new decision commensurate with the directives of this opinion.