



U.S. Citizenship
and Immigration
Services

02

[Redacted]

FILE: WAC 03 050 50177 Office: CALIFORNIA SERVICE CENTER Date: **SEP 30 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:
[Redacted]

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

Robert P. Wiemann, Director
Administrative Appeals Office

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invasion of personal privacy**

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 importer and reseller of computer parts 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, and the beneficiary is not qualified to perform the duties of the proffered position, were it determined to be a specialty occupation. On appeal, counsel submits a letter written by the petitioner.

The AAO will first address the issue of whether the instant position is 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.

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 November 27, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence (RFE). According to the letter in support of the petition, the beneficiary would perform duties that entail: researching the petitioner's competitors using the Internet and public registration records; reading business news web sites to gather information on the market for the petitioner's products and services; participating in meetings to present information gathered; and determining in which foreign and local markets the petitioner's products and services could most effectively be sold. The petitioner elaborated on these duties in its response to the directors RFE, adding the following: analyzing and optimizing marketing programs; developing and implementing customer targeting strategies and models; measuring and analyzing marketing program results; and conducting customer profiling, sales trending and forecasting, and product penetration analysis. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business, marketing, marketing research, or the equivalent.

The director determined that the proffered position was not a specialty occupation. The director found that the duties listed in the petitioner's response to the director's request for evidence (RFE) appeared to be similar to those of a market research analyst, as that position is described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. The director compared information provided about the petitioner with that found in the *Handbook* regarding industries which normally employ market research analysts, and he concluded that the evidence on the record did not show how a full time market research analyst would be occupied within the petitioner's organizational structure and industry.

On appeal, the petitioner contends that the director's decision implied that the size of the company is the determinative factor regarding whether a market research analyst is needed, and the petitioner asserts that the size of the petitioning entity is irrelevant.

The petitioner states that it is common for small computer companies such as the petitioner's to require the services of a full time market research analyst. No documentation to support this claim, however, is submitted. Simply going on record 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). This is the only contention the petitioner sets forth on appeal with respect to the director's finding on the issue of whether the position is a specialty occupation. The petitioner has not clarified or explained the proposed role of a market research analyst within the petitioner's context.

Neither counsel nor the petitioner has provided any information or evidence to overcome the director's decision regarding the nature of the proffered position. As the director concluded, the documentation on the record failed to establish any 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 director also found that, even if the instant position were classified as a specialty occupation, the beneficiary would not be qualified to perform the proposed duties. On appeal, the petitioner emphasizes that

it submitted evidence that the beneficiary possesses the equivalent of a U.S. bachelor's degree in marketing in the form of an educational evaluation provided by a college professor with authority to grant college credit for work experience.

Section 214(i)(2) of 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 beneficiary completed only one year of university studies in Argentina; thus, the petitioner must demonstrate that the beneficiary's education and training meet the fourth criterion noted above. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The petitioner states that the evaluation letter provided by [REDACTED] Seton Hall University is sufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in marketing, pursuant to the first criterion above [REDACTED] based his opinion, in part, on letters written by the beneficiary's three former employers, which provide no information whatsoever about the beneficiary's duties and responsibilities. The employment letters found on the record merely state job titles and employment dates. [REDACTED] so utilized the beneficiary's resume in arriving at his conclusions; however, a resume is not considered to be documentation of an individual's previous work experience. The submitted evaluation is thus questionable, and as such, must be discounted. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The record contains no other documentation to support the beneficiary's qualifications for the proffered position, were it determined to be 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.