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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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DA

APR 05 2005

FILE: EAC 03 177 53229 Office: VERMONT SERVICE CENTER Date:

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

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 sustained.

The petitioner imports and wholesales textile and art products. It 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 § 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.

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 market research analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 23, 2003 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to the petitioner's May 23, 2003 letter, the beneficiary would perform duties that entail:

- Conduct research on *tenugui* textiles manufactured in Japan, assess price, quality, service support, availability, variety, dyeing and finishing etc. and determine our import schedules accordingly;
- Gather and collect data on local competitors in the New York retail market, analyze their fabric usage, stitching, styles, color balance, as well as their pricing, sales, means of marketing and distribution;
- Investigate wholesale market conditions in the U.S. market, identify target department stores, specialty shops, museums, restaurants, in the local area and devise marketing strategies to promote our merchandise;
- Interface and liaise with management about new fashion designs and fabric materials based on market trends, research and qualitative analysis on textile materials;
- Conduct and design market surveys to determine consumer buying habits, consumer needs and preferences as well as the preferences of our buyers and contractors and use results to plan upcoming material, design, illustration and style of merchandise;
- Conduct analysis and create market reports indicating success of a specific marketing approach in real dollar terms and report results to management;
- Research and contact major contractors in the U.S. retail industry and negotiate contracts;
- Determine merchandise costs and formulate merchandising policies and optimum distribution methods to minimize costs and ensure profitable operations;
- Calculate and estimate results of upcoming marketing and promotional activities, tabulate and create graphs and charts on results and plan new approaches accordingly; and
- Plan the price scheme of our products based on quantitative analysis of market reports, financial drafts, optimization, and budgeting.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in marketing or an equivalent thereof.

The director found that the proffered position, which appears to be related to sales, was not a specialty occupation because the proposed duties are not specialized and complex as to require a baccalaureate degree in a specific specialty. The director also found that the positions described in the job postings submitted by the petitioner were not similar to the proffered position. 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, counsel states, in part, that the director did not consider the evidence that was submitted in response to the Request for Evidence (RFE), which included a detailed job description of the proposed duties and five letters from similar businesses. Counsel states further that the proffered position, which is that of a textile market analyst, closely resembles the market research analyst position that is described in the Department of Labor's *Occupational Outlook Handbook (Handbook)* and *Dictionary of Occupational Titles (DOT)*. Counsel also states that CIS has previously approved similar cases. In response to the director's finding that the positions described in the job postings submitted by the petitioner were not similar to the proffered position, counsel states, in part, that small businesses, like the petitioner, do not use publicized advertisements as a means of locating qualified applicants. Counsel also states that, as the proffered position is a new position, the petitioner, therefore, does not have any evidence of previous hiring requirements for this position.

The record contains the following supporting documentation:

- Certificate of Incorporation for the petitioner, naming the beneficiary as its registered agent;
- Share Certificate, signed by the beneficiary as the petitioner's president, certifying that the beneficiary is the owner of the petitioner's total authorized 200 shares;
- Sublease agreement for the petitioner's office space, valid from April 1, 2003 to March 30, 2004, signed by the vice president of [REDACTED] and beneficiary as the petitioner's president;
- Agreement of Lease, dated March 7, 2001, signed by the president of [REDACTED] and the president of Big Green LLC;
- Business Plan, dated April 19, 2003, for the petitioner;
- Letter, dated May 22, 2003, from the president of [REDACTED] New York, Inc. (Sanyo), which is a subsidiary of [REDACTED], the largest apparel manufacturer in Japan, with over \$1 billion in sales, stating that [REDACTED] has decided to engage the petitioner for consulting services and, starting from June 2003, the petitioner will import more than 8,000 items for [REDACTED] newly established apparel packages;
- Undated Letter of Intent from the president of Seasons International, Inc. (Seasons), which is a Manhattan retail store that sells Japanese antiques and interiors, stating that, although no written contract has been completed between Seasons and the petitioner, from the beginning of 2003, the petitioner has imported 85% of Seasons products;
- Bank letter, dated May 15, 2003, from a business banking officer at Citibank, stating that the beneficiary is the sole signatory for the petitioner's account and the account balance is \$32,000; and
- Copy of the petitioner's price list and the products displayed at its website, www.sora-arts.com.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is primarily that of a market research analyst, a position that is primarily found in 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. A review of the top executive and sales and marketing managers job descriptions in the *Handbook*, 2004-2005 edition, finds that the job duties parallel the responsibilities of top executive, and of sales and marketing managers, positions that are primarily found in industries including manufacturing, wholesale, and retail. Information in the *Handbook* indicates that a wide range of educational backgrounds is suitable for entry into these positions, but many employers prefer individuals with related experience plus a broad liberal arts background, and other employers prefer individuals with a background related to their jobs. It is noted that not all top executive/sales and marketing manager positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the proposed duties are of such complexity as to require a baccalaureate degree in a specialized and related area. It is noted that the beneficiary holds a bachelor's degree in home economics conferred by a Japanese institution. An evaluation from a company that specializes in evaluating academic credentials finds that the beneficiary's foreign bachelor's degree is the equivalent of a bachelor's degree in textile manufacturing from an accredited U.S. institution of higher education. The record also indicates that the beneficiary has approximately nine years of employment experience as a textile marketing analyst at [REDACTED] in Tokyo, Japan. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the specialty occupation, within the meaning of regulations.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.