

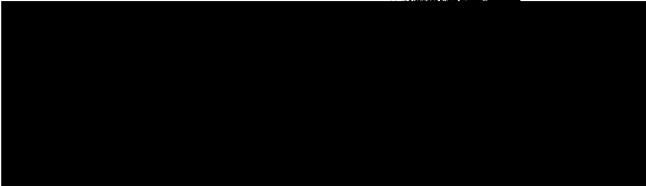


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FILE: SRC 04 032 52776 Office: TEXAS SERVICE CENTER

Date: AUG 03 2005

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:

SELF-REPRESENTED

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

**DISCUSSION:** The director of the service center 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 aluminum bleacher and seat manufacturer that seeks to employ the beneficiary as a marketing 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 proposed position does not qualify as a specialty occupation. On appeal, the petitioner submits a brief and previously submitted evidence.

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 Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail gathering, organizing, and interpreting information using sources such as company records, trade journals, government reports, and financial publications; writing reports with recommendations; managing projects; analyzing business and financial matters; handling accounting and finance including help desk support and training; analyzing consumers; studying possible sales volume, product life cycle, competition, and manufacturing; planning, designing, implementing, and analyzing survey results; selecting, assigning, training, supervising, and evaluating subordinate personnel; coordinating disciplinary action; developing and implementing plans to improve the economy, efficiency, and quality of work and services; and directing organizational/operational studies and presenting recommendations to reduce costs and increase revenues. The petitioner stated that the position requires a bachelor's degree in marketing or its equivalent, and 10 years of experience.

The director determined that some of proposed duties pertain to an analyst. But she also found it unlikely that the beneficiary would perform only marketing analyst responsibilities. The director indicated that the petitioner has one employee, the beneficiary's husband, whose L-1 status had expired, leaving the beneficiary as the sole employee to manage business affairs. The director discussed the analytical duties of a marketing analyst as they are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) then indicated that no evidence shows that the proposed position entails full-time analytical work. It is not enough, the director explained, for a petitioner to describe the duties of a specialty occupation then state the beneficiary will be performing those duties; CIS must take into account the totality of the evidence, how it relates to the petitioner's organization, and whether or not the organization can support the proposed position. The director determined that the proposed position did not qualify as a specialty occupation given the nature of the petitioner and how the proposed position would be used within its organization.

On appeal, after reiterating the beneficiary's duties, the petitioner states that the proposed position can only be performed by a person who holds a bachelor's or higher degree in marketing, economics, or a related field, or has relevant experience. The petitioner asserts that the DOL indicates that a master's degree is the minimum requirement for entry into a marketing analyst position; that case law shows that a position qualifies as a specialty occupation if it requires knowledge that is associated with a bachelor's degree or higher; and that knowledge of mathematics, social sciences, accounting, sales, and marketing are required to perform a marketing analyst position. The petitioner states that it is a US corporation, has an Internal Revenue Service tax identification number, and will have an employer-employee relationship with the beneficiary. The director's decision, the petitioner asserts, is subjective and not based on regulatory guidelines. Citing to *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), the petitioner states that whether a position is professional is not related to a petitioner's size, the salary offered, or whether or not a petitioner has a past practice of seeking candidates for the proposed position. The petitioner maintains that the beneficiary qualifies for the proposed position.

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 first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In the November 10, 2003 letter the petitioner asserts that the proffered position is a specialty occupation because of information in the *Occupational Information Network (O\*Net)*. Yet, the *O\*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information in the *O\*Net*.

The petitioner maintains that the proposed position is analogous to a marketing analyst as that occupation is depicted in the *Handbook*. The AAO disagrees with this analogy. The *Handbook* indicates that the principal responsibility of a market research analyst is to conduct primary research by devising methods and procedures for obtaining data, and it explains that they:

often design telephone, mail, or Internet surveys to assess consumer preferences. Some surveys are conducted as personal interviews by going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers, under the market research analyst's direction, usually conduct the surveys.

The director correctly noted that the beneficiary would not principally conduct primary research. In the November 10, 2003 letter the petitioner describes the beneficiary as devoting only 10 percent of her time to planning, designing, implementing, and analyzing survey results. The duty to "make analyses of the consumer field, where broad distribution of the product and keen competition require constant analyses of the factors affecting consumer behavior" is unclear; even so, it does not directly relate to conducting primary research as this duty is described in the *Handbook*. None of the other duties conveyed by the petitioner relate to conducting primary research. The AAO, therefore, finds that the proposed position does not rise to the level of a market research analyst as that occupation is described in the *Handbook*. Consequently, the

petitioner fails to demonstrate that a baccalaureate or higher degree, or its equivalent, is the normal minimum requirement for entry into the particular position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner submits job postings to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which requires that the petitioner demonstrate that its specific degree requirement is common to the industry in parallel positions among similar organizations. The job postings are not persuasive in that they are from employers that are dissimilar in nature from the petitioner, an aluminum bleacher and seat manufacturer with one employee. The employers are in architecture/building, sales and marketing, legal, and automotive industries. Thus, the petitioner fails to demonstrate that its specific degree requirement is common to the industry in parallel positions among similar organizations.

Under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner can also establish that the proposed position is a specialty occupation if it shows that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The AAO's conclusion, from the evidence to which it has previously referred, is that the proposed position does not rise to the level of a market research analyst as that occupation is portrayed in the *Handbook*. Thus, the petitioner fails to establish this criterion.

No evidence in the record establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner show that it normally requires a degree or its equivalent for the position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As discussed earlier in this decision, the evidentiary record fails to establish that the proposed position rises to the level of a market research analyst, which is a specialty occupation, as that occupation is described in the *Handbook*. Thus, the petitioner fails to establish 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 on the ground that the proffered position is not a specialty occupation.

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.