

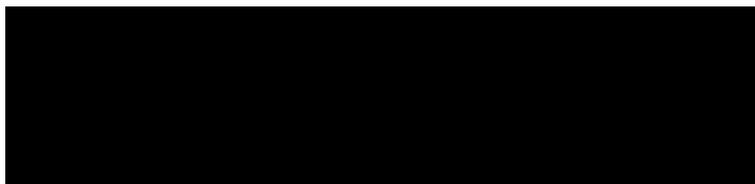
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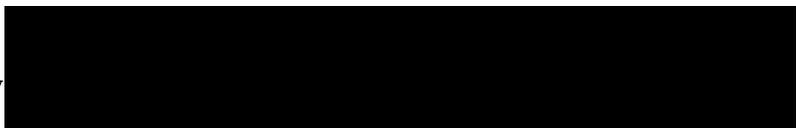
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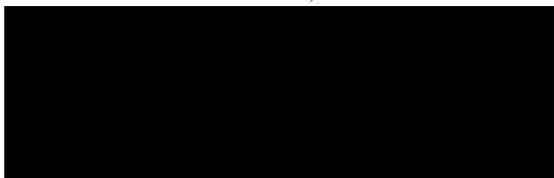
FILE: LIN 02 142 55620 Office: NEBRASKA SERVICE CENTER Date: AUG 16 2005

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:



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 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 a medical equipment and supply company. In order to employ the petitioner as a market research 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 record before the AAO contains three decisions by the director. The first denied the petition, and the two subsequent decisions affirmed that result. For the reasons to be discussed below, the AAO finds the director correct.

The director initially denied the petition on two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). The director's two later decisions essentially affirmed the initial decision.

The specialty occupation will be addressed first.

On appeal, counsel asserts that the petitioner has here proffered a market research analyst position and that such a position qualifies as a specialty occupation.

Counsel's contention that the market research occupational category qualifies as a specialty occupation is correct: contrary to the director's interpretation, the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that the normal minimum entry-level requirement for market research analysts is a master's degree in a specific specialty. However, as discussed below, the AAO finds that the petitioner has not established that the proffered position is that of a market research analyst or any other occupational category that requires at least a bachelor's degree, or the equivalent, in a specific specialty. In reaching this determination, the AAO considered the entire record of this proceeding, including all the evidence submitted by the petitioner and counsel from the filing of the Form I-129 (Petition for Nonimmigrant Worker) through the matters filed on appeal of the director's latest decision.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] 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 [2] 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." (Italics added.)

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.

CIS has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In the section entitled "The Position Offered," the petitioner's letter submitted with the Form I-129 described the beneficiary's duties in broad terms such as "constantly researching new markets for areas in which we can continue to develop our business" and helping the petitioner "coordinate a full range of our core business activities." This letter continued in this generic and abstract vein as it specified the duties in the following terms:

1. Prepare bids and tender documents to secure orders for the supply of pharmaceutical products. He will be required to conduct research studies, market surveys, and collect data such as buyer profiles, product features with pricing, etc.
2. Facilitate and execute the purchase orders placed by the clients, which include hospitals and pharmacies.
3. Effectively deal with the manufacturer(s) and place orders so as to fulfill the supply and meet [the] product requirements of our clients.
4. Research and analyze the secondary market for hard to find pharmaceutical products, forecast requirements based on assessment of current and future conditions[,] providing management with data helping them to decide about expansion into the consumer segment market.
5. Carry out market surveys and prepare product feasibility reports to the president.

In its July 23, 2002 letter of reply to the director's request for additional evidence (RFE) the petitioner did not further delineate the proposed duties.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor 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 baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The job and duty descriptions that the petitioner presented in the record convey no meaningful information about the specific tasks that would engage the beneficiary, or the knowledge, skills, and competencies he would have to apply. In addition to the vagueness of the above descriptions, which is decisive, it is not evident how many of these generally described duties - such as bid preparation, tender of documents, document facilitation, execution of client's purchase orders, and dealing with manufacturers' orders - would relate to a market research analyst position. The references by counsel and the petitioner to the *Handbook* and the *Dictionary of Occupational Titles (DOT)* are not probative: as already noted, they are not necessary to establish that true market research analyst positions qualify as specialty occupations; they do not establish that the proffered position and its duties comprise a market research analyst position.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, and, accordingly, considered the evidence of record in the light of the 2004-2005 edition of the *Handbook*.<sup>1</sup> The AAO found that the evidence establishes that beneficiary would be employed in the marketing field, but not that he would apply the level of specialized knowledge that is normally required for the market research analyst occupation as presented in the *Handbook*.

The *Handbook* indicates that employers of entry-level market research analysts normally require at least a master's degree in marketing or a related field. The 2004-2005 edition of the *Handbook*, at page 173, describes the employment of market research analysts as follows:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Market research analysts devise methods and procedures for obtaining the data they need . . . .

After compiling the data, market research analysts evaluate them and make recommendations to their client or employer based upon their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations . . . .

Because of the applicability of market research to many industries, market research analysts are employed in most industries . . . .

As a whole, the *Handbook's* information on market research analysts conveys that their work is characterized by the design and implementation of data-collection methodologies, data collection, and precise data analysis, at a level of expertise that most often requires a master's degree, as stated at page 174 of the *Handbook*:

In addition to being required for most market and survey research jobs in business and industry, a master's degree is usually the minimum requirement for a job as an instructor in junior and community colleges.

The information provided by the petitioner does not establish that the beneficiary's involvement with marketing would be on such a specialized methodological and analytical level, or that it would require a bachelor's or master's degree in marketing or a related specialty. The record provides no information about the specific research and analytic methodologies that the beneficiary would employ and the specialized knowledge that he would have to apply in their use. There are no specifics about any of the job functions upon which the petitioner relies for specialty occupation status.

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<sup>1</sup> The AAO's comments are based upon the 2004-2005 edition of the *Handbook*.

The information that the petitioner has provided in the record is general, and does not establish that the duties of the proffered position comport with those of a market research analyst or with any other occupation that normally requires at least a bachelor's degree, or its equivalent, in a specific specialty. Accordingly, there is no basis for a finding that the petitioner had satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the director was correct in determining that the petitioner had not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position that requires at least a bachelor's degree in a specific specialty that is commonly required by employers in the petitioner's industry that are similar to the petitioner when they hire for positions which are parallel to one proffered by the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed above, the petitioner has not established that its proffered position is any type for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Also, the record before the director did not include any submissions from a professional association or from firms or individuals in the industry attesting that they routinely employ and recruit only persons with at least a bachelor's degree in a specific specialty. As noted in the director's initial decision, contrary to the petitioner's letter of reply to the RFE, the petitioner has not submitted letters from similar firms in its industry.

The information in the record is too limited, abstract, and generic to establish that the proffered position and its duties are especially complex, specialized, or unique. Accordingly, the director was correct in finding that the petitioner had not satisfied either the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (which provides that "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") or the provision at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) (for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty).

Finally, as the petitioner has not presented a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

Because the petitioner has not established that the proffered position is a specialty occupation, the beneficiary's qualifications are inconsequential to the outcome of this case and will not be addressed.

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.