



U.S. Citizenship
and Immigration
Services

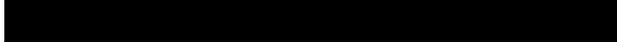
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FILE: LIN 03 013 52121 Office: NEBRASKA SERVICE CENTER Date: **AUG 16 2005**

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, Director
Administrative Appeals Office

DISCUSSION: The director of the Nebraska 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 developer, manufacturer and distributor of electronic soft-tip dartboards, with 40 employees worldwide. It seeks to hire the beneficiary as a market research analyst for its Tokyo offices. The director denied the petition based on his determination that the petitioner had failed to establish that the beneficiary was qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with a letter from counsel. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the beneficiary is qualified to perform the duties of a specialty occupation. In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such a degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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 director denied the application based on his determination that the beneficiary's degrees were unrelated to the proffered position. The AAO does not agree. It finds the record to establish that the beneficiary holds a U.S. baccalaureate degree in communications studies from the University of Montana, a field of study that is directly related to the occupation of marketing research analyst. However, this degree falls short in qualifying him to perform the duties of the proffered position of market research analyst.

The Department of Labor's *Occupational Outlook Handbook (Handbook)* – the resource on which the AAO routinely relies for information on the educational requirements of particular occupations – identifies the occupation of market research analyst as generally requiring those seeking employment to hold master's degrees. As noted at page 174 of the *Handbook*:

A master's degree is the minimum requirement for many private sector market and survey research jobs Market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline.

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 *Handbook*, at page 174, also clearly indicates the limits placed on those seeking employment in the field of marketing research with only baccalaureate degrees:

Bachelor's degree holders who majored in marketing and related fields may qualify for many entry-level positions that might or might not be related to market and survey research. These positions include research assistant, administrative or management trainee, marketing interviewer, and salesperson, among others.

Therefore, as the beneficiary's degree in communications is not at the master's level, it is not a degree required by the occupation and, therefore, cannot establish him as qualified to perform the duties of the proffered position under the requirements of the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(C).

On appeal, counsel submits letters from faculty at Seattle University and the University of Montana, and the vice president of a marketing research firm, as well as a career services fact sheet published on the University of Colorado's website, to establish the relevance of communications studies to the occupation of market research analysts. Each of the letters also offers the writer's opinion that a baccalaureate degree in communications studies is sufficient for employment as a market research analyst and states the experience on which the writer's opinion is based. However, while relevant to the issue before the AAO, the letters submitted by counsel are unpersuasive. Without any independent evidence to substantiate the opinions expressed, they do not establish that the beneficiary is qualified to perform the duties of a specialty occupation. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As the record does not indicate that the beneficiary holds a foreign degree required by the specialty occupation and there is no licensing or certification of market research analysts, the AAO turns to the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) which allow the petitioner to establish the beneficiary as qualified to perform the duties of a specialty occupation if he has a combination of education, training, and/or experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty

occupation, and has had his expertise in the specialty recognized through progressively responsible positions directly related to the specialty.

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), equivalence to a U.S. baccalaureate or higher degree shall mean the achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty, and shall be determined by one or more of the following requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (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.

As the record provides no evidence that would allow the petitioner to establish the beneficiary's qualifications under the first four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D), the AAO will conduct its own evaluation of the beneficiary's training and employment history under the requirements of the fifth and final criterion. When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. For equivalence to an advanced (or master's) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. In addition to documenting the length of the beneficiary's training and/or work experience, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in

the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record offers the following documentation of the beneficiary's employment history: the discussion of the beneficiary's work experience included in the petitioner's October 14, 2002 letter of support submitted at the time of filing and the beneficiary's resume. This documentation is, however, insufficient to meet the requirements of the fifth criterion. Both the petitioner's letter and the beneficiary's resume indicate that the beneficiary has been employed for less than five years in what is presented as related employment. Further, had the petitioner established a five-year employment history, neither the letter nor the resume provide the type of detailed information that would allow the AAO to determine whether the beneficiary's previous employment included the theoretical and practical application of specialized knowledge, was gained while working with other degreed individuals and resulted in the recognition of his expertise in the specialty. Therefore, the petitioner has failed to establish the beneficiary as qualified to perform the duties of a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO also finds that the proffered position is not that of a market research analyst, as the director concluded, nor is it a specialty occupation.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

As stated by the petitioner, the duties of the proffered position would require the beneficiary to:

- Be responsible for researching market conditions in Japan to determine potential sales;
- Gather information on competitors, prices, sales, marketing and distribution methods;
- Use survey results to prepare marketing campaigns based on regional preferences and market conditions;
- Develop pricing strategies with the goal of maximizing profits and market share while ensuring customer satisfaction;
- Decide how to modify marketing efforts to meet international sales goals for Japan;
- Assess pricing values and evaluate ways to motivate distribution in the Japanese market, while monitoring trends indicating the need for new marketing strategies; and
- Devise methods of creating brand awareness and contribute to brand management.

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. Market research analysts might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways

While there is some overlap between the duties of the proffered position and that of a market research analyst, the job described by the petitioner does not indicate that the beneficiary's employment would involve the range or complexity of the analytical responsibilities routinely performed by market research analysts, including responsibility for devising the methods for gathering and compiling market data. Instead, the position's focus on the marketing of the petitioner's product aligns it more closely with the occupation of advertising, marketing, promotions, public relations, and sales managers, as discussed by the *Handbook* at page 23:

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including product development managers and market research managers, they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and

oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

Further evidence that the proffered position is that of a marketing manager is provided by the petitioner's letter of support. In that letter, the petitioner stated that the beneficiary was currently employed in F-1 practical training status as a "marketing and promotion coordinator" and that this position was similar to the proffered position. It described his training duties as contributing to "business communication and execution" with the petitioner's Japanese distributors, providing "management to international customers" and assisting in the "production and route support" of the petitioner's products and services. These are not duties normally identified with the employment of market research analysts.

Regarding the educational requirements for marketing managers, the *Handbook*, at pages 24-25, states

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists

As the *Handbook* indicates most marketing manager positions are filled on the basis of experience, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a related field. Accordingly, the AAO finds that the record fails to establish the proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three criteria remaining: a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. However, a review of the record finds no evidence that would satisfy any of the preceding requirements.

While, at the time of filing, the petitioner asserted that its degree requirement was common to its industry, a review of the record finds no evidence to support this statement. The letters written by faculty members at Seattle University and The University of Montana, and the vice president of the marketing research firm, as well as the electronic fact sheet from the University of Colorado, offer statements regarding degree requirements and hiring practices, but do not establish the petitioner's degree requirement as an industry norm. The opinions expressed by the letter writers relate to the hiring requirements for marketing research analysts and are not probative in light of the AAO's determination that the proffered position is that of a marketing manager.

In its letter of support, the petitioner also stated that its degree requirement was common within its own organization, that it hired professionals to perform duties such as market analysis and that its head of marketing had a degree in economics. However, the petitioner submitted no evidence to support these statements and, therefore, cannot establish that its normal practice is to require a degree to perform the duties of its proffered position. As previously noted, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

At the time of filing, the petitioner also contended that its business was highly specialized and that the duties of its proffered position were so specialized and complex that their performance was usually associated with a bachelor's or higher degree. It stated that a degree requirement was essential for performing pricing and marketing analysis in both the U.S. and Japanese markets, and to understand sales, marketing and distribution. However, these are the typical duties of marketing managers. They do not support a finding that the position's responsibilities reflect a higher degree of knowledge and skill than would normally be required of a marketing manager or represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications beyond those of a marketing manager.

For the reasons discussed above, the AAO finds that the proffered position is not a specialty occupation. For this additional reason, the petition may not be approved.

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 met that burden.

ORDER: The appeal is dismissed. The petition is denied.