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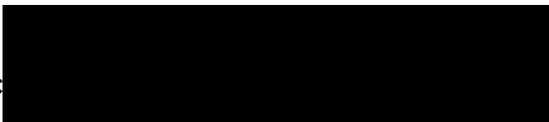


FILE: WAC 04 059 51451 Office: CALIFORNIA SERVICE CENTER

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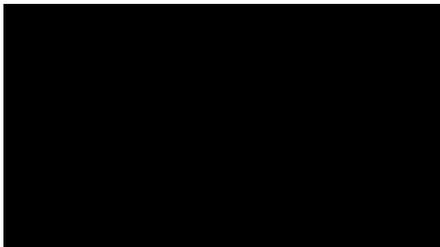
AUG 31 200

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 service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a pharmacy that seeks to employ the beneficiary as a market research 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 on the ground that the proposed position does not qualify as a specialty occupation. On appeal, counsel 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 market research 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. This evidence indicates that the beneficiary would perform duties that entail spending 70 percent of her time using network computer based tools to gather information on competitors, prices, sales, and methods of marketing and distribution; researching and monitoring selected markets in the pharmaceuticals industry with the goal of developing expertise in the area; developing, designing, and managing market research plans and projects to support marketing strategies for health industry units; analyzing market and health industry information using primary and secondary research sources such as census statistics, association data, magazine articles, and information obtained from the Internet, and marketing studies: using mathematical models to predict answers to questions such as the length of business cycles and the effect of inflation on the economy; devising methods and procedures to obtain data such as sampling techniques to conduct a survey and mathematical modeling techniques to develop forecasts; creating health industry reports with charts, graphs, and written summary analysis; conducting market research; managing budgets; analyzing and interpreting data and presenting final reports/recommendations to sales, marketing, management and other internal and external groups as required; analyzing and interpreting data using appropriate and established research methodologies, deriving meaningful conclusions and implications from the data and organizing and presenting findings to management; and presenting economic and statistical concepts. The beneficiary will spend 30 percent of her time conducting public opinion research to inform the media, lobbyists, and others about the needs and attitudes of the public; directing the choice of study method; designing questionnaires; coordinating data collection and preparing and tabulating analysis; preparing market research analysis, conclusions, and recommendations; routinely interpreting and distributing relevant business and/or market news and articles from various sources and creating and managing a database to track research information. The beneficiary will focus on assisting management in decision-making through consumer analysis which includes client satisfaction and market segmentation; competitor analysis which includes competitive differentiation and service (product) positioning; and self-assessment/company auditing, including strengths and weaknesses analysis; and strategy development. The petitioner further explained the proposed position in the response to the request for evidence. The petitioner states that the beneficiary qualifies for the proposed position based on her master of science in industrial economics, which is considered the educational equivalent to a U.S. master's degree in industrial economics.

The director stated that some of the proposed duties reflect those of a market research analyst as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). But the director stated that sole reliance on the *Handbook* and other government publications to demonstrate that a position is a specialty occupation is misplaced. Each position, the director stated, must be evaluated based on the nature and complexity of the job duties, and performing incidental specialty occupation duties is insufficient to establish that a position is a specialty occupation. The director also stated that the beneficiary's degree in a related area does not guarantee the position is a specialty occupation. The director stated that the duties of a market researcher do not include acting on data. The director was not

persuaded to classify the proposed position as a market research analyst because the petitioner's industry differs from the industry that the *Handbook* describes as employing market research analysts. The director found the petitioner did not have the organizational complexity to require the services of a part-time market research analyst. According to the director, the evidence does not establish that the petitioner has any marketing staff or team department or marketing specialists to gather market data for analysis by a market research analyst; or sales division, staff or team department; or sales representatives to implement advertising or sales campaigns based on the results of the beneficiary's research and recommendations. No evidence establishes, the director stated, that the petitioner's business produced advertising or sales campaigns through its own in-house account, creative, and media services departments. The director was not persuaded that the beneficiary would actually perform market research analyst duties.

On appeal, counsel asserts that the director incorrectly interprets the *Handbook's* information about the duties of a marketing research analyst. Counsel states that 70 percent of the beneficiary's duties are associated with those of a market research analyst and require at least a master's degree, and that 30 percent may not be typical market research analyst duties. The beneficiary's duties parallel those of a market research analyst as that occupation is described in the *Handbook* and the *California Occupational Guide*, counsel asserts. According to counsel, the *Handbook* reports that healthcare organizations offer job opportunities to market research analysts, and the request for evidence explained why the petitioner requires the services of a market research analyst.

Upon review of the record, the petitioner has established one of the criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The petitioner has established the criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(I), which is that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. The proposed position is analogous to a market research analyst, which qualifies as a specialty position, based on the duties of the proposed position and the petitioner's detailed explanation of why it requires the services of a market research analyst.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The evidence in the record demonstrates that the beneficiary is qualified to perform the proposed position. The educational evaluation states that the beneficiary's master of science degree in industrial economics is equivalent to a master's degree in industrial economics from an accredited college or university in the United States.

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.

ORDER: The appeal is sustained. The petition is approved.