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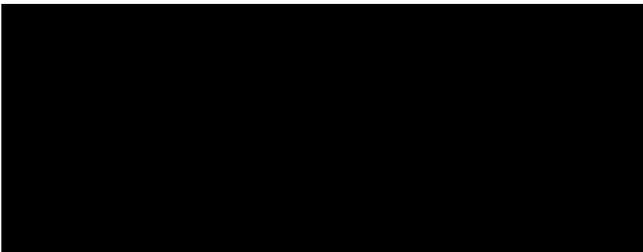
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FILE: WAC 03 116 53047 Office: CALIFORNIA SERVICE CENTER Date: **AUG 31 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

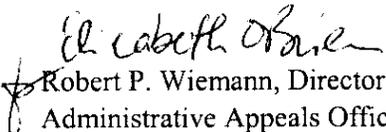
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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 insurance agency with three employees. It seeks to employ the beneficiary as a market research analyst. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was 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 counsel's brief and new and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 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.

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.

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 (5th 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 petitioner states that it is seeking the beneficiary’s services as a market research analyst. Evidence of the beneficiary’s duties includes: the Form I-129; a February 21, 2003 letter of support from the petitioner; and counsel’s November 13, 2003 response to the director’s request for evidence, which included a more detailed description of the work done by the beneficiary.

At the time of filing, the petitioner stated that the beneficiary’s duties would entail: researching market conditions in local and regional areas to determine potential sales of services; examining and analyzing statistical data to forecast marketing trends; analyzing processes, sales and methods of marketing and distribution; developing and implementing marketing plans; supervising employees in implementing marketing plans for the company. The petitioner stated the candidate must have a bachelor’s degree in business administration, finance or an equivalent degree.

The director requested additional information about the proffered position, including specific job duties, the percentage of time to be spent on each duty, and level of responsibility. Additionally, the director requested a copy of an organizational chart showing the petitioner’s hierarchy and staffing levels, quarterly wage reports, federal income tax returns, and state income tax returns.

In response to the director’s request for evidence, the petitioner provided the same description of the proffered position with the additional duties of evaluating data and making recommendations to management based upon findings and providing management with information needed to make decisions on the promotion and pricing of services. The petitioner included a percentage breakdown of the duties:

- Conducting research of market conditions to determine potential sales of services, devising methods and procedures for obtaining data needed (30% of the time);
- Analyzing, evaluating and examining statistical data as well as the prices, sales and methods of marketing (35% of the time);
- Making recommendations to management and in developing and implementing marketing plans (25% of the time);
- Supervising employees (to be hired) in the implementations of marketing plans (10% of the time).

In his denial, the director questioned whether the petitioner has the organizational complexity to support a position for a market research analyst. The director noted that petitioner employed three persons and had a net annual income of \$95,000. The director referred to the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) in support of his conclusion that the petitioner does not engage in the type of

business for which a marketing research analyst would be required on a full-time or part-time basis. The AAO does not agree with the director's conclusions regarding the industries in need of market research analysts. Based on the discussion of the occupation in the 2004-2005 edition of the *Handbook*, it concludes that such analysts may reasonably be found in virtually every industry and business seeking to enhance the sales of its products and/or services. However, the AAO does share the director's concerns regarding the employment that has been described by the petitioner.

The *Handbook*, at page 173, states the following with regard to the employment of marketing research analysts:

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. 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 discussion, or setting up booths in public places such as shopping malls. Trained interviewers, under the market research analyst's direction, usually conduct the surveys.

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

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

The occupation of a market research analyst is a specialty occupation, normally requiring those seeking entry-level employment to have a master's degree in a related field. However, while the petitioner has identified its position as that of a market research analyst, its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention.

At the time of filing, the petitioner offered a generic description of the beneficiary's market research duties, one that appeared to describe the occupation of market research analyst rather than the proffered position. The director found this description insufficient to establish the position as a specialty occupation and asked for further information. In response, the petitioner provided two more job duties. The petitioner did not refer to the beneficiary's role within the petitioner's business.

On appeal, counsel contends that the previous attorney did not adequately respond to the director's request and submits additional information on appeal. Counsel asserts that new evidence submitted in support of the appeal establishes that the petitioner is making the beneficiary a reasonable and credible offer of employment as a market research analyst consistent with its needs. On appeal, the petitioner contends that its previous counsel provided an incomplete job description and explanation of its company's need for a market research analyst and was not discovered by the petitioner until the director's notice of decision was received. Counsel

explains that the insurance industry is rapidly changing and the knowledge required to keep pace with the changing products and market forces affecting its business is complex and unique. The petitioner maintains that it must research and understand the trends of products being offered by different insurance companies. Counsel refers to the *Handbook* and notes that the knowledge required to perform the duties of a market research analyst is usually associated with a baccalaureate degree.

In the instant case, counsel asserts that the duties of the offered position include: developing programs to expand the petitioner's commercial-based clientele through extensive research programs aimed at marketing new commercial business; assessing niche markets available with [two insurance companies] and assessing the types and density of local businesses; conducting on-going market and product competitive analysis; developing a methodology for locating target businesses; and identifying customer needs and market positioning of products to meet those needs. The petitioner maintains that it must research and understand the trends of products being offered by different insurance companies. However, these duties do not appear to be primarily those performed by a market research analyst. As discussed above, market research analyst duties concern 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. The petitioner has not discussed how the beneficiary would gather data on competitors but rather will research different products to sell to clients. The record does not support the alleged complexity of the duties of a market research analyst.

The petitioner has offered a more expansive description of the duties of its proffered position than it provided in response to the director's request for evidence. However, it has not established that the proffered duties are those of a market research analyst. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. Note, for instance, this statement 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 research would be on such a specialized methodological and analytical level, or that it would require a 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 she 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.

The petitioner's description of the duties of its position are not of a market research analyst. The AAO has determined that the performance of those duties do not meet the statutory definition of a specialty occupation -- employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary's services.

Therefore, for the reasons related in the preceding discussion, 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.

Additionally, the *Handbook* indicates that a master's degree is the minimum requirement for many private sector market research and survey jobs. The petitioner indicated that the proffered position requires a degree in business administration, finance, or an equivalent degree. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Mutter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Therefore, the petitioner's requirements for the job, a bachelor's degree in business administration without further specification, fail to qualify the position as 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.