



U.S. Citizenship
and Immigration
Services

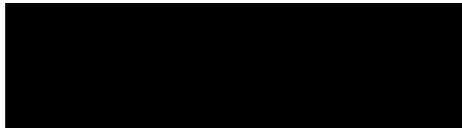
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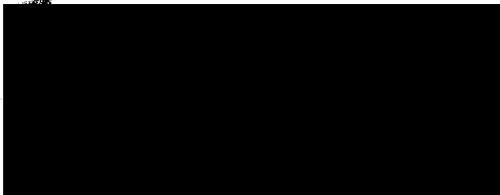
FILE: WAC 04 075 52837 Office: CALIFORNIA SERVICE CENTER Date: DEC 14 2005

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 service center director 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 textile supplier and exporter. It seeks to employ the beneficiary as a market research analyst and endeavors to classify him 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief stating that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the offered position qualifies as a specialty occupation.

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

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

[A]n 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 are 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) the 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) the Form I-290B. 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 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Gather and analyze statistical data on past sales to predict future revenues and marketing trends;
- Analyze and propose ways to improve company products, services, efficiency and profits to help the company retain a competitive edge despite industry changes;
- Perform analytical work in product and service research and development and conduct surveys and program studies;
- Gather relevant and timely market information through communication with current or prospective clients in order to uncover dissatisfied customers or possible new products or services;
- Identify trends, through market research, that affect sales and profitability;
- Apply market research for product and service planning, pricing and promotions;
- Participate in the development of marketing plans which will promote current services and opportunities in the market;
- Conduct research, analyze the data collected and provide written reports;
- Gather data on competitors and analyze their prices, sales and methods of marketing and advertisement;
- Work with subject matter experts to develop and support new or revised programs, services or projects and provide event and program support;

- Assess and evaluate services provided and identify potential problems and opportunities and make recommendations for appropriate course of action such as promotions, distribution and the viability of adding new services, opening new branches or otherwise diversifying business operations;
- Evaluate marketing programs against established performance objectives; and evaluate the success of marketing and sales programs and recommend adjustments and changes to achieve desired results.

The petitioner requires a minimum of a bachelor's degree in economics, business administration, marketing, statistics or a closely related field for entry into the offered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would:

- Gather and analyze statistical data on past sales to predict future revenues and marketing trends (the record does not indicate what tasks the beneficiary would perform in analyzing statistical data, where or how that data would be obtained or what tasks/skills would be utilized in predicting future revenues or marketing trends);
- Analyze and propose ways to improve the petitioner's products and services, efficiency and profits (the record does not establish what tasks would be performed or skills utilized by the beneficiary in proposing ways to improve products/services);
- Perform analytical work in product and service research and development and conduct surveys and program studies (the record does not establish what tasks would be performed in product and service research and development, or the nature or purpose of any surveys or studies to be undertaken); or
- Conduct research, analyze the data collected and provide concise written reports (the record does not indicate the nature or manner of any such research, or purpose of any reports to be written based upon this unidentified research).

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. A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used in the *Handbook* in discussing an occupational title, e.g., gather and analyze statistical data on past sales to predict future sales; gather data on competitors and analyze prices, sales and methods of marketing; or use research to advise on adding new lines of merchandise, opening new branches, or otherwise diversifying business operations. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as

a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

In the instant case, the petitioner has offered no specific description of a market research analyst duties beyond the generalized terms describing the position in the *Handbook*. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). As previously noted, CIS must examine the actual employment of the alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. The petitioner's description of the market research analyst duties, however, is so generic that it is not possible to identify those tasks and, therefore, whether the position is that of a marketing research analyst. Further, without a specific description of the position's duties, the AAO is unable to determine whether the performance of those duties meets 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.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a market research analyst. For a position to qualify as a specialty occupation, there must be a close corollary between the required specialized studies and the position offered. The *Handbook* notes that market research analysts generally possess graduate degrees in economics, business administration, marketing, statistics or a closely related discipline. Entry level positions such as research assistants, administrative or management trainees, marketing interviewers, or professional sales positions may be filled by individuals possessing only a bachelor's degree in marketing or a closely related field. The petitioner describes the position offered in generalized terms referring to a market research analyst, not one of the aforementioned entry-level positions. Thus, the beneficiary's degree (found by a credentials evaluations service to be equivalent to a bachelor's degree in business administration and management from an accredited university in the United States) would not qualify him to perform the duties of a market research analyst.

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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