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FILE: WAC 04 140 54222 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 sells medical equipment and provides nursing/caregiver personnel to a variety of customers. 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 marketing 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:

- Establish effective research methodology and design formats for data gathering, such as mailed surveys, opinion polls, or questionnaires;
- Conduct surveys and tests to study consumer reactions to various brands, designs, and qualities of medical supplies and equipment, and to measure the effectiveness of the petitioner’s marketing and advertising campaign;
- Gather data on other retailers of similar products and analyze their prices, sales, volume, and methods of marketing and distribution;
- Research competitors’ prices or lowest price offers and discounts and recommend promotional activities to improve sales;
- Collect data on most common and frequent products sold, customers’ preferences on brands and designs and frequency of needs;
- Assess the petitioner’s physical inventory, movement of stock-on-hand items, and most frequent back-ordered medical equipment/supplies;
- Review newspaper advertisements, catalogs, and websites for healthcare related products targeted for potential sales;
- Interpret, evaluate, and interrelate research data to achieve understandable and rational results concerning financial conditions of the petitioner;

- Develop integrated business analyses and projections for incorporation into strategic decision-making;
- Forecast the retail potential of various medical supplies, equipment, and other healthcare related products;
- Organize and maintain research data collected into written journals and computerized databases;
- Maintain files of primary competitors to gain comparison and reference for petitioner improvement and development;
- Provide the petitioner's owner in-depth market analysis and the budget required for procuring additional lines of merchandise and other expansion ventures;
- Provide consultative, technical, and analysis support, as appropriate, to management on strategic business matters;
- Design and use established report formats and data collection systems for data gathering;
- Consolidate reports generated by market research activities, making conclusions, recommendations and related documents for management review;
- Conduct weekly reconciliation of sales, merchandise, and other related accounts to determine in-demand products;
- Prepare reports to management to apprise which products are determined to be fast-moving items, which need regular replenishment, and to identify the slow or non-moving products which may be offered to customers and disposed of in bulk or discounted sales; and
- Assist in the development of annual operating plans, which include market information and forecasts that support the prepared operating budgets.

The petitioner states that it requires a minimum of a bachelor's degree in business administration, marketing, computer science, or their equivalent, for entry into the proffered 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:

- Establish research methodology and design formats for data gathering such as surveys, opinion polls, and/or questionnaires (the record does not indicate the purpose of any such data or what type of data is to be gathered);
- Conduct surveys and tests to study consumer reaction to various brands, designs, and qualities of medical supplies and equipment, and to measure the effectiveness of the petitioner's marketing and advertising campaign (the record does not establish what type of surveys or tests would be conducted or designed to study consumer reaction, or the complexity of the design of such surveys or tests; the record does not establish what type of information would be obtained by any such surveys or tests or of what use that information would be in analyzing any marketing or advertising campaign that the petitioner may use);
- Interpret, evaluate, and interrelate research data to achieve understandable and rational results concerning financial conditions of the petitioner (the record does not establish what data would be evaluated and/or how that data would yield results effecting the petitioner's financial condition);
- Develop integrated business analysis and projections for incorporation into strategic decision-making (the record does not establish what type of business analysis or projections would be made for use in business decision-making);

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., they establish research methodology and design formats for data gathering such as surveys, opinion polls, and/or questionnaires, or they gather data on competitors and analyze their prices, sales, volume, and methods of marketing and distribution. 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 the marketing 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 marketing 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 beneficiary's education has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in computer science from an accredited college in the United States. Although some employers seek individuals for market research analysts with strong computer skills, those skills will not substitute for the required education of a graduate degree in economics, business administration, marketing, statistics or closely related fields. The beneficiary's education is not closely related to the duties of a market research analyst, and would not qualify him to perform the duties of that position.

It should further be noted that some of the duties detailed by the petitioner appear to be duties normally performed by marketing, promotions, and/or sales managers, such as: research competitor's prices and discounts and recommend promotional activities; collect data on products sold by the petitioner and customer's preferences on brands and designs; assess the petitioner's physical inventory regarding stock-on-hand and back-ordered items; review newspaper advertisements, catalogs, etc. for products targeted for sales; conduct weekly reconciliation of sales, merchandise, and related accounts to determine in-demand products, and prepare reports to apprise management which of petitioner's products are fast-moving items and in need of regular replenishment, and which need to be disposed of through bulk or discount sales. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into the aforementioned positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, marketing, sales, and promotion management positions may require a bachelor's or master's degree in business administration with an emphasis in marketing. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* further notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty, or its equivalent, is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Further, the petitioner has not established that these duties meet any of the remaining requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify the position as a specialty occupation.

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.