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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 068 50622 Office: CALIFORNIA SERVICE CENTER Date: DEC 19 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

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 The decision of the director will be withdrawn and the matter will be remanded to him for further consideration.

The petitioner is a wholesale jewelry business that seeks to employ the beneficiary as a part-time market analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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.

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 part-time market analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 7, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: exploring the possibilities of expanding the petitioner's present supply of products to expand overall revenues; performing detailed market studies concentrating on such areas as competitor and demographic analysis; preparing surveys, questionnaires, and other related data in order to ascertain such factors as customer satisfaction, price competitiveness, market stability, and overall product desirability; analyzing overseas jewelry manufacturing markets; and studying international jewelry wholesalers and exporters. The petitioner indicated that the beneficiary is a qualified candidate for the job due to his bachelor's degree equivalency in marketing and his related work experience.

The director found that the proffered position was not a specialty occupation because the job is not a market research analyst position; it is a marketing manager position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is a market analyst, and is not a marketing manager position. Counsel states further that the director disregarded expert testimony directly relevant to this case.

The proffered position is that of a market research analyst for the petitioning entity, which is a jewelry wholesale business with 32 employees and a gross annual income of \$8 million. The *Handbook*, 2004-2005 edition, indicates that employers in private industry require a master's degree as the minimum requirement for market and survey research jobs. While bachelor's degrees may be acceptable for entry-level positions such as research assistant, administrative or management trainee, marketing interviewer and salesperson, the duties of the proffered position describe those of a market research analyst. As such, the petitioner has overcome this portion of the director's objections. The petition may not be approved, however, because the director has not determined whether the beneficiary is qualified to perform the duties of a specialty occupation. The record indicates that he has the equivalent of a bachelor's degree in marketing and three years of related employment experience. He thus cannot be determined to have the equivalent of a master's degree. The regulation provides that for equivalence to a master's degree, the alien must have a baccalaureate degree followed by at least five years of progressive experience in the specialty. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As he does not have a baccalaureate degree followed by at least five years of progressive experience in the specialty, he cannot be determined to have the equivalent of a master's degree. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.