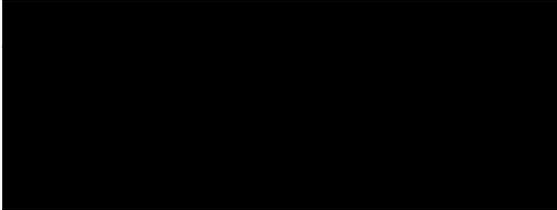


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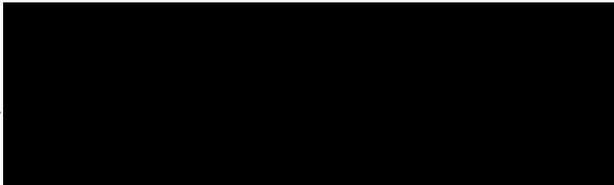
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FILE: WAC 03 185 50430 Office: CALIFORNIA SERVICE CENTER Date: **JUL 06 2005**

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a retail seller of cellular phones and accessories. It seeks to employ the beneficiary as a market research analyst and 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 on the grounds that the proffered position did not qualify as a specialty occupation and the beneficiary was not qualified to perform services in a specialty occupation. A timely appeal (Form I-290B) was filed on February 27, 2004, in which counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. On August 16, 2004 the AAO summarily dismissed the appeal on the ground that no such brief or evidence was submitted and the petitioner had failed to identify in the appeal any erroneous conclusion of law or statement of fact in the director's decision. Counsel filed a timely motion to reopen, asserting that a timely appeal brief had been filed. Along with the motion counsel submitted a copy of the brief and supporting materials, together with documentary evidence of their filing on March 23, 2004. The AAO determines that counsel's motion satisfies the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(2). Accordingly, the petitioner's appeal will be considered on the merits.

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.

As provided in 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.

To qualify to perform services in a specialty occupation, an alien must meet one of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(C):

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the decisions of the service center and the AAO; and (5) Form I-290B, counsel's appeal brief and motion to reopen, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as an agent of Pacific Bell Wireless selling wireless telephones and accessories at nine store locations in Greater Los Angeles. The petitioner indicated that its business was established in 1998, had over 30 employees and gross annual income exceeding \$5 million in 2002, and wished to hire the beneficiary as a market research analyst to "research market conditions in the local, regional and national areas to determine potential sales of our products." According to the petitioner, the beneficiary would spend approximately 70% of his time on research and analysis activities, 10% on implementation, and 20% on monitoring activities. The beneficiary was qualified for the proffered position, the petitioner asserted, based on his bachelor of science in business administration from the University of the Philippines, granted in April 1997, together with five years of progressively responsible work experience in the Philippines in the field of marketing management.

In his decision the director found that the duties described by the petitioner reflected the duties of a sales worker supervisor, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. Based on information in the *Handbook* that a baccalaureate degree in a specific specialty is not a minimum requirement for entry into a position as sales worker supervisor, and the absence of other evidence from the petitioner that the proffered position met any other criteria of a specialty occupation

enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A), the director concluded that the record failed to establish that the position qualifies as a specialty occupation. The director also determined that the evidence of record failed to establish that the beneficiary qualified to perform the services of a market research analyst. In particular, the director found that the credentials evaluations submitted by the petitioner did not show that the beneficiary's foreign degree was equivalent to a U.S. master's degree in a specific specialty directly related to the position, as required by the specialty occupation, or that the beneficiary had a combination of education and work experience equivalent thereto.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F.Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

On appeal counsel contends that the director erred in finding that the proffered position was not that of a market research analyst, and that the beneficiary lacked the educational qualifications to perform the services of the position. Counsel describes the duties of the proffered position, and the percentage of time required by each duty, as follows:

Research and Analysis – 70%

[U]sing his knowledge and expertise in *Marketing Research, Systems Analysis and Design, Advanced Topics in Production/Operations Management, Information Resource Management and Marketing Management*, the beneficiary will conduct various marketing research studies, and data analysis activities for key Marketing and Communications initiatives. He will develop and provide marketing strategy and definition that are responsive to customer needs and market opportunities. He will perform competitive analysis utilizing network computer based tools to gather information on competitors, prices, sales, and methods of marketing and distribution and assist the business development team in working with third parties who are interested in developing to the standard. He will be in charge of building expertise on major wireless data market drivers. In addition, he will review/monitor all wireless data technologies, their degree of deployment and their potential for representing management systems opportunities. Also, he will monitor wireless service providers to ascertain their plans for deploying wireless data services. At the end of each study, he will be responsible in [*sic*] analyzing and interpreting data using appropriate and established research and statistical methodologies, deriving meaningful conclusions and implications from the data, and organizing and presenting findings to management. He will report on research initiatives in both written and presentation formats.

Implementation – 10%

[W]ith ample knowledge in *Computer Methods and Applications, Marketing Research and Quantitative Methods*, [the beneficiary] will direct the choice of study method; design of questionnaires; and coordination of data collection. This position involves using research tools such as surveys, focus groups, in-depth interviews and usability tests, as well as analyzing secondary research from data providers and internal databases. He will make recommendations related to treatment strategy, evaluation of survey results, and campaign effectiveness. [The beneficiary]'s knowledge in direct response marketing, relational and database marketing, and research methodologies and practices will be called upon to identify and define marketing opportunities; generate, refine and evaluate marketing actions; and monitor marketing performance of [REDACTED]

Monitoring and Evaluating – 20%

[U]sing his knowledge in Business Finance, Accounting Theory, Micro- and Macro-Economics and Communication Skills, the beneficiary will be preparing cost vs. benefit analyses on all programs to determine relative success or areas for improvement. [The beneficiary] shall measure the results of marketing efforts and provide a feedback mechanism to quantify the success or failure of a particular study as it relates to consumer buying behavior. He will write product articles and design/manage all product documentation. He will gather input from customers, prospects, analysts, competitive analysis, and business development. He will visit our [future] branches in Arizona and shall monitor the number of exposures, awareness/comprehension/attitude change, and sales & profit contribution.

Based on the foregoing recitation of the job duties, the AAO is persuaded that the proffered position is that of a market research analyst, as described in the *Handbook*, 2004-05 edition, at 173, which reads as follows:

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 discussions, 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 it 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

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develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

With respect to the educational requirements for market research analysts, the *Handbook* states the following:

A master's degree is the minimum requirement for many private sector market and survey research jobs, and for advancement to more responsible positions. Market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or marketing research firms prior to graduation.

. . . . Bachelor's degree holders who majored in marketing and related fields may qualify for many entry-level positions that might or might not be related to market and survey research. These positions include research assistant, administrative or management trainee, marketing interviewer, and salesperson, among others.

Handbook, id., at 174. Based on the foregoing language, the AAO has held that market research analysts are a specialty occupation requiring a master's degree in business administration, marketing, statistics, communications, or a related specialty for entry into a private sector position. Thus, the petitioner has overcome the director's ruling that the proffered position is not a specialty occupation.

The petition may not be approved, however, as the beneficiary does not qualify to perform the services of the specialty occupation under one of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(C):

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary does not meet the first qualifying criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1), because his degree – a bachelor of science in business administration from the University of the Philippines – is not from a U.S. college or university. Nor does the beneficiary meet the second qualifying criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), because none of the three credentials evaluations in the record claims

that the beneficiary's foreign degree is equivalent to a master's degree in a specific specialty required by a market research analyst position, like those identified in the *Handbook*. Counsel implies in his appeal that the beneficiary's bachelor's degree in business administration qualifies him to perform the services of a market research analyst because much of the coursework was in specialty areas directly related to the position. While the *Handbook* indicates that a bachelor's degree in marketing or a related field may be sufficient for an entry-level position such as a research assistant, administrative or management trainee, marketing interviewer, or salesperson, the duties of the proffered position, as described by the petitioner, are at a higher level and require greater expertise. The AAO is not persuaded by counsel's suggestion that a bachelor's degree is a sufficient educational credential for the position. The third qualifying criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), does not apply to this petition because market research analysts do not require state licensure.

Counsel asserts that the beneficiary meets the fourth qualifying criterion to perform the services of a market research analyst, at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), because he has a combination of education and work experience equivalent to a master's degree in business administration from a U.S. university. As provided in 8 C.F.R. § 214.2(h)(4)(iii)(D), whether the beneficiary's education, specialized training and/or experience is equivalent to a master's degree from a U.S. university shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the

specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as: (i) Recognition of expertise in the specialty occupation by at least two recognized authorities¹ in the same specialty occupation; (ii) Membership in a recognized foreign or United States association or society in the specialty occupation; (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers; (iv) Licensure or registration to practice the specialty occupation in a foreign country; or (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary does not meet any of the foregoing criteria. With respect to the first criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the evaluation from the professor in the school of business and economics at Seattle Pacific University and the accompanying letter from the university's associate provost do not demonstrate that the professor has the authority to grant college-level credit for training and/or experience in the specialty and that Seattle Pacific University has a program for granting academic credit based on an individual's training and/or work experience.

The second criterion, 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), is inapplicable in this case.

As for the third criterion, 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), a credentials evaluation service may only evaluate an individual's education. There are two reports from evaluation services in the record. One – from Educational Assessment, Inc. – declares that the beneficiary's degree from the University of the Philippines is equivalent to a bachelor of science in business administration from a U.S. college or university. The other – from Foundation for International Services, Inc. – declares that the beneficiary's foreign degree plus five and a half years of work experience is equivalent to a U.S. master's degree in business administration. Thus, neither credentials evaluation service claims that the beneficiary's degree, by itself, is equivalent to a U.S. master's degree in a specific specialty directly related to the market research analyst position.

As for the fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), there is no documentation in the record of any certification or registration from a nationally-recognized professional association or society with respect to the beneficiary.

As for the fifth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the record does not indicate that the beneficiary has a combination of education, specialized training, and/or work experience in areas related to the specialty which is equivalent to a master's degree required by the specialty. Even if CIS were to consider the beneficiary's bachelor of science in business administration from the University of the Philippines as equivalent to a bachelor's degree in business administration from a U.S. college or university, the beneficiary would need five years of progressively responsible work experience in the specialty field of market research analysis to have the equivalent of a master's degree in the specialty.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

The record includes a letter from a regional manager in the human resources department of a Philippine company stating that the beneficiary was hired as a field account executive in June 1997, promoted to a branch manager in February 1998, and continued to work for the company in that capacity until July 2000. The record also includes a letter from the human resources manager of [REDACTED] stating that the beneficiary was employed by that company from August 2000 through December 2002 as an industry manager. Even if the beneficiary's experience at those two companies, totaling five and a half years, could be considered as the theoretical and practical application of specialized knowledge required by the specialty occupation, there is no documentation in the record that such experience was gained while working with peers, supervisors, or subordinates with a degree or its equivalent in the specialty occupation, or that the beneficiary has recognition of expertise in the specialty in one of the five forms of documentation enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), or in any other documentary form.

For the reasons discussed above, the record does not establish that the beneficiary's education, training, and work experience is the equivalent of a master's degree in the specialty occupation of market research analyst under any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D). Accordingly, the petitioner has failed to demonstrate that the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform the services of a market research analyst.

The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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