



U.S. Citizenship  
and Immigration  
Services

Health...  
Investment of personal funds

...

[Redacted]

DA

JULIAN 2005

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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:  
[Redacted]

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 director of the California 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 employment placement agency, with two employees. It seeks to hire the beneficiary as a marketing 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 previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's 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 (5<sup>th</sup> 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 marketing analyst. Evidence of the beneficiary’s duties includes: the Form I-129; a March 24, 2003 letter of support from the petitioner; and counsel’s May 5, 2004 response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail researching market conditions in the local and regional areas to identify approaches to increase sales as well as to generate exposure; evaluation of the petitioner’s services to determine which could be added to increase its desirability; establishing methodologies and design formats for data gathering, such as survey and development of questionnaires; examining and analyzing data to forecast future trends, gathering data on competitors and analyzing prices, sales and methods of marketing and public relations; identification of new market sources as well as expansion and retention of existing customer bases; collection of market data, customer preferences and selection habits; implementation of a structured strategic approach to ensure optimum market penetration with minimal expenditure; ensuring that the petitioner remains competitive by continuously reviewing costs, quality of services and integrity of billing; developing and implementing marketing strategies and plans designed to achieve the agency’s census and mix goals; reviewing quarterly, making appropriate changes to meet current market conditions; maintaining regular, ongoing contact with referral sources through personal visits, telephone calls, brochures, and any other means which significantly attract potential employers and clients; developing and implementing events and functions to attract prospective employers/clients and/or referral sources; providing appropriate trend and activity reports; monitor marketing trends and competition to ensure marketing strategies and plans meet marketing conditions; developing and preparing press releases, advertisements, brochures, flyers and other collateral materials which are appropriate for the petitioner’s sales efforts; train and coordinate staff members to serve as back up in responding to customer inquiries to ensure all inquiries are handled timely and appropriately. The petitioner indicated that the position requires a bachelor’s degree or its equivalent in business, marketing or commerce or a related field.

In response to the director’s request for evidence, counsel offered a description of the percentage of time the beneficiary would spend on each duty:

- 30% - Designing and implementing marketing strategies
- 20% - Monitoring marketing trends and providing appropriate trend and activity reports

- 20% - develop advertising brochures, events and functions to attract prospective clients and/or referral sources
- 15% - develop and implement marketing strategies and plans designed to achieve the company's goals of growth and success
- 15% - Coordinate staff members to assist in market research polling and marketing and public relations programs.

Counsel stated that the beneficiary would be working 20 to 30 hours per week and would not be responsible for the supervision of any employees. However, counsel noted that the beneficiary would advise the sales and marketing staff on the implementation of new strategies and business goals approved by management. Counsel stated that the proffered position requires a minimum of a bachelor's degree because it demands in-depth theoretical knowledge of economics, marketing and business management. Counsel stated that this position is a new position for the petitioner. In response to the director's request for a more detailed description of the petitioner's business organization, counsel stated that the petitioner is an employment agency that refers professional workers to interested employers in their areas of expertise. Counsel stated that the petitioner is a full-time service employment agency that offers opportunities in full-time, temporary and contract employment. Additionally, in response to the director's request for the copies of the petitioner's tax returns, counsel submitted personal income tax returns. The Federal Income Tax Form Schedule C for tax year 2003 indicates a \$45,312 loss for the petitioner.

In his denial, the director noted that some of the listed duties reflect some of those listed under market research analyst and other duties reflect those listed under marketing manager in the Department of Labor Occupational Outlook Handbook (*Handbook*).

In the instant petition, the petitioning entity stated that the duties of the proffered position parallel those of a market research analyst. According to the *Handbook*, 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. The *Handbook* reports that after compiling the data, market research analysts evaluate them and make recommendations to their client or employer based on their findings. They provide a company's management with information needed to make decisions on the promotion, design and distribution of the products or services.

Based on a review of the *Handbook* and the petitioner's job description and response to the director's request for evidence, the AAO cannot conclude that the duties of the proposed position are parallel to those performed by a market research analyst. Although the petitioner has stated the beneficiary would establish methodologies and design formats for data gathering, the petitioner also stated that the majority of the beneficiary's duties would be designing and implementing marketing strategies. The petitioner stated that the beneficiary would spend 20% of her time developing advertising brochures, events and functions to attract prospective clients and/or referral sources.

Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of a marketing manager in the *Handbook*. According to the *Handbook*, marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, marketing managers determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets. According to the *Handbook*, marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. This is

similar to the proffered position in that the duties include maintaining regular, ongoing contact with referral sources through personal visits, telephone calls, brochures, and any other means which significantly attract potential employers and clients; developing and implementing events and functions to attract prospective employers/clients and/or referral sources; and ensuring that the petitioner remains competitive by continuously reviewing costs, quality of services and integrity of billing.

With respect to the educational qualifications required of marketing managers, the *Handbook* states:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. For marketing, sales and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the marketing manager position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations – neither the petitioner nor counsel addressed this issue.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The duties parallel those in the *Handbook* for a marketing manager, an occupation that does not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Additionally, the director determined that the beneficiary was not qualified to perform the duties of the specialty occupation. However, as discussed above, the proffered position is not a specialty occupation, therefore, the beneficiary's qualifications do not need to be addressed.

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.

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.