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FILE: WAC 03 263 54796 Office: CALIFORNIA SERVICE CENTER Date: JUN 21 2005

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, 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 an owner and operator of specialty gift shops that seeks to employ the beneficiary as a market research analyst, and endeavors to classify her 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 stating that the beneficiary was not qualified to perform the duties of a specialty occupation in that the beneficiary did not possess a graduate degree which is required to perform the duties of a market research analyst. On appeal, counsel submits a brief stating that a graduate degree is not required to perform the duties of the position, and that the beneficiary is qualified for the position by virtue of her bachelor's degree in business administration with a concentration in marketing.

The issue to be determined is whether the beneficiary is qualified to perform the duties of a market research analyst.

The U.S. Department of Labor's *Occupational Outlook Handbook (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. The position offered in this instance, is not that of a research assistant, administrative or management trainee, marketing interviewer, or a professional sales position, the duties of which could be performed by individuals holding a baccalaureate level education. The petitioner has not established that the beneficiary possesses a graduate degree in economics, business administration, marketing, statistics or a closely related discipline. The beneficiary is not, therefore, qualified to perform the duties of a market research analyst.

Beyond the decision of the director, the proffered position is not that of a market research analyst, and does not appear to qualify as a specialty occupation. Market research analysts 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. As a portion of their responsibilities, they devise methods and procedures for obtaining needed data, often designing telephone, mail, or Internet surveys to assess consumer preferences. The duties of the proffered position do involve some market research and analysis of internal company sales data, etc., but do not involve market research of the complexity described above and performed by market research analysts. The duties to be performed are similar to those performed by marketing managers. The *Handbook* notes that:

Marketing managers develop the firm's detailed marketing strategy. With the help of subordinates, including product development managers and market research managers, they determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets – for example, business firms, wholesalers, retailers, government, or the general public. 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. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising and promotions managers to promote the firm's products and services and to attract potential users.

The duties of the offered position require, in part, the beneficiary to: analyze internal sales data on items sold at the petitioner's gift shops; analyze products offered for sale by the petitioner with regard to product mix, pricing, etc.; develop new product markets and marketing strategies; recommend new products and promotional strategies; and collect pricing data on the petitioner's existing gift shops and business center operations. These duties are routinely performed by marketing managers, promotions managers, and closely associated positions. Indeed, as counsel notes in his brief, the duties of the position do not include such duties as the development of research methods or procedures traditionally performed by market research analysts. It should be noted that the *Handbook* indicates that a wide range of educational backgrounds is suitable for entry into marketing management 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, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. 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. It does not appear, therefore, that a baccalaureate or higher degree in a specific specialty or its equivalent is the minimum requirement for entry into the position. A degree in a wide range of disciplines would appear to suffice. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner submitted copies of job advertisements for market research analyst/marketing positions to establish the industry educational requirements of the proffered position. The advertisements submitted, however, are not from organizations similar to that of the petitioner and are of little evidentiary value. The petitioner has failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree or its equivalent for the proffered position, and offers no evidence in this regard. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the proffered position appear to be routine for marketing managers. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4). For this additional reason, the petition may not be approved.

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 and the appeal shall accordingly be dismissed.

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