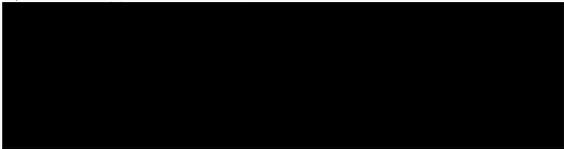




U.S. Citizenship
and Immigration
Services

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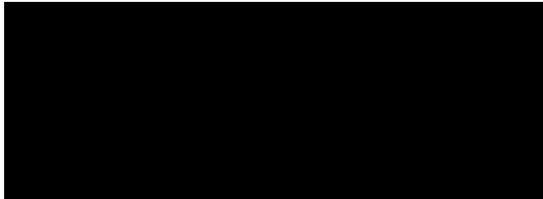
Date: NOV 15 2005

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 director of the 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 a wholesaler and retailer of mobile phones and accessories. It seeks to employ the beneficiary as a market research analyst. The petitioner, therefore, endeavors to classify the beneficiary 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 ground that: (1) the proposed position does not qualify as a specialty occupation, and (2) the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and previously submitted evidence.

The AAO will first address whether the proposed position qualifies as 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.

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 market research analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. This evidence indicates that the beneficiary would perform duties that entail researching market conditions related to the industry, concentrating on techniques and designs offered by companies; establishing the petitioner's performance in relation to the industry; conducting research and studies; designing and formatting tools for data gathering such as surveys, opinion polls, or questionnaires; examining and analyzing the data gathered to forecast future market trends in the industry; gathering data about similar companies and their corresponding marketing strategies to establish a comparative-analysis study that would provide a competitive advantage when forming marketing techniques and strategies; using internal and third party databases, identifying information and data reports; using externally produced market databases and directories to prepare market analysis reports and identify information to support and strengthen proposals, and create initiatives and client service opportunities; conducting prospect profiling to identify areas in the general market; locating and creating reports of internal information on new technologies and design; collecting, analyzing, and summarizing information in a format that would be helpful to management's decision-making processes regarding marketing strategies; collecting and summarizing information gathered from the Internet, telephone queries, surveys, and literature to support the petitioner's program development and marketing strategies; obtaining third party studies for market reference; creating presentations and spreadsheets for executive audiences; maintaining a market intelligence library system to keep track of research and studies; presenting marketing plans and new promotional strategies; and developing and strengthening networks. The beneficiary will supervise a research assistant and an administrative assistant. The submitted document entitled "Job Opening" states that the proposed position requires a bachelor's degree in business administration, business management, or market research analysis and professional experience in the management field.

The director stated that many of the proposed duties reflect those of a market research analyst as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). But the director stated that sole reliance on the *Handbook* and other governmental publications to demonstrate that a position is a specialty occupation is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that each position must be evaluated based on the nature and complexity of the job duties, and that performing incidental specialty occupation duties is insufficient to establish that a position is a specialty occupation. The director also stated that the beneficiary's degree in a related area does not guarantee the position is a specialty occupation. The director was not persuaded to classify the proposed position as a market research analyst because the petitioner is not in the industry that the *Handbook* describes as employing market research analysts. The director found the petitioner did not have the organizational complexity to require the services of a market research analyst, and concluded that the beneficiary would also perform routine advertising, marketing, and sales duties. The director was not

persuaded that the beneficiary would actually perform market research analyst duties. The director found the proposed position also includes duties of advertising, marketing, promotions, public relations, and sales managers as those occupations are described in the *Handbook*, and that the *Handbook* reports that a bachelor's degree is not required for those occupations. The director was not persuaded that the petitioner normally requires a baccalaureate degree for the proposed position. The director concluded that the beneficiary is not qualified to perform a specialty occupation.

On appeal, counsel asserts that the *Handbook* reveals that companies prefer to hire persons with degrees in accountancy or marketing or who have completed financial management or marketing courses. Counsel refers to job postings to show that a bachelor's degree in marketing or a related field is required for the proposed position. Counsel states that small companies also require the services of a market research analyst; that the petitioner previously used the services of an independent researcher; and that due to expansion the petitioner now needs to employ a full-time market research analyst. Counsel maintains that the beneficiary is qualified for the proposed position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* regarding the nature of particular occupations and the education, training, and experience normally required to enter into and advance within the occupation.

Counsel asserts that the proposed position parallels a market research analyst, and submits an excerpt from the *Handbook's* job classification "Advertising, Marketing, Promotions, Public Relations, and Sales Managers" to support her assertion. This is not persuasive in establishing that the proposed position requires a baccalaureate degree in business administration, business management, or market research analysis since the *Handbook* conveys that employers do not require a baccalaureate degree in a specific specialty for

occupations in the job classification “Advertising, Marketing, Promotions, Public Relations, and Sales Managers.” The *Handbook* reports:

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. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

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. . . .

The above excerpts from the *Handbook* reveal that employers do not require a baccalaureate degree in a specific specialty such as business administration, business management, or market research analysis for managerial positions in advertising, marketing, promotions, public relations, and sales.

For a marketing research analyst, the *Handbook* states that a “master’s degree is the minimum requirement for many private sector market and survey research jobs,” and that “advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline” is appropriate. The *Handbook* also states:

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.

The petitioner’s requirement of a baccalaureate degree in business administration, business management, or market research analysis differs from the *Handbook’s* educational requirement of a master’s degree; and although the *Handbook* explains that a bachelor’s degree in marketing or a related field is acceptable for entry-level positions as a research assistant, administrative or management trainee, marketing interviewer, or salesperson, the proposed position is not one of those occupations. Thus, the petitioner's educational requirement is incongruous with the *Handbook's* information.

Furthermore, the evidence of record reflects that the beneficiary possesses a bachelor’s degree in history from a Philippine institution; an educational evaluation from Pacific International Credential Evaluations Inc. states that this education is equivalent to a bachelor of arts degree with a major in political science and research management from an accredited U.S. college or university.¹ A bachelor’s degree in political science and

¹The evaluator does not define “research management” and the AAO finds that the submitted transcript does not support the evaluator’s finding that the coursework relates to “research management.” CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion

research management however, does not relate to the educational fields that the *Handbook* reports as appropriate for a market research analyst or an entry-level position as a research assistant, administrative or management trainee, marketing interviewer, or a salesperson. Thus, the petitioner does require the minimum educational qualifications for the proffered position.

Based on the above discussion, the proposed position differs from a market research analyst and the entry-level positions of research assistant, administrative or management trainee, marketing interviewer, and salesperson.

The AAO observes that there are inconsistencies in the submitted evidence. The beneficiary's bachelor's degree in political science and research management is incongruous with the petitioner's stated educational requirement of a bachelor's degree in business administration, business management, or market research analysis as shown in the submitted document entitled "Job Opening." The revenue generated by the petitioner and the number of its employees is also inconsistent. The petitioner's letter dated January 14, 2004 conveys that the petitioner has 28 employees and earns a gross annual income of \$4 million; whereas the Form I-129 petition indicates annual income of \$849,373 and 12 employees. The organizational chart submitted into the record shows 9 employees, including the beneficiary. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No evidence in the record explains or resolves these inconsistencies.

Based on the evidence to which the AAO has referred, the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree in a specific specialty, or its equivalent, is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must demonstrate that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submits job postings, information from America's Career InfoNet, and a letter from Dr. Pacifico Bell, professor at California State University Northridge, to establish an industry standard. The job postings are deficient as the companies are either dissimilar to the petitioner, a wholesaler and retailer of mobile phones and accessories, or their nature is not disclosed. Verizon is a publicly traded company; Infonetics Research is a market research and consulting firm; Kinecta Federal Credit Union and E-Loan are in the financial industry; Harrah's Entertainment is an entertainment company; and the nature of International Gateway Exchange is not disclosed. American's Career InfoNet does not indicate that the bachelor's degree

only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

must be in a specific academic discipline; thus, this evidence is insufficient in establishing that a baccalaureate degree in business administration, business management, or market research analysis is required for the proposed position. Dr. Bell's letter states that the proposed position requires a baccalaureate degree in marketing, business administration, economics, political science or related fields. However, no independent evidence in the record corroborates this statement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

To satisfy the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must show that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed earlier, the *Handbook* reveals that employers do not require a baccalaureate degree in a specific specialty such as business administration, business management, or market research analysis for managerial positions in advertising, marketing, promotions, public relations, and sales; and that the proposed position differs from a market research analyst and the entry-level positions of research assistant, administrative or management trainee, marketing interviewer, and salesperson. No evidence reflects that the proposed duties are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Because the proposed position is newly created, no evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Managerial positions in advertising, marketing, promotions, public relations, and sales do not require a baccalaureate degree in a specific specialty, according to the *Handbook*. The *Handbook* also reveals that based on the petitioner's acceptance of a bachelor's degree with a major in political science and research management, the proposed position differs from a market research analyst and entry-level positions as a research assistant, administrative or management trainee, marketing interviewer, or salesperson as the educational requirements of those occupations differ from the petitioner's educational requirement. Accordingly, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, 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 on the ground that the proffered position is not a specialty occupation.

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.