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**U.S. Citizenship  
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FILE: WAC 04 041 52185 Office: CALIFORNIA SERVICE CENTER Date: OCT 03 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:



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 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 bicycle accessory distributor with three employees. It seeks to employ the beneficiary as a marketing associate. 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 denial letter; and (3) Form I-290B, with counsel's brief and new and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the 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 associate. Evidence of the beneficiary’s duties includes the Form I-129 and a November 24, 2003 letter of support from the petitioner.

At the time of filing, the petitioner stated that the beneficiary’s duties would entail, in part: (1) studying market research in the field of bicycle helmets; understanding the different helmets, prices, sales and methods of marketing and distribution; gathering data on competitors (9 hrs a week); (2) providing study findings to president in a computerized system; reporting current and future helmets; calculating weekly shipping and order quantity; calculating quantity sold (4.5 hrs a week); (3) conducting research (11.5 hours per week); (4) communicating with manufacturers abroad and with customers in the U.S. (5.5 hrs per week); (5) forecasting and analyzing marketing trends (4 hrs per week); (6) maintaining assigned account records; responsible for some accounts payable, managing accounts receivable; and performing posting of cash receipts and expenses (5.5 hours per week). The petitioner indicated that the position required a U.S. baccalaureate or higher degree in a professional field. The petitioner asserted that the beneficiary is well qualified for the position because she has a bachelor degree of arts in marketing.

In his denial, the director noted that the petitioner was established in 2003 with three employees. The director noted the duties described by the petitioner appear to reflect some of the duties performed by market research analysts as listed under market and survey researchers in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*). The director stated that sole reliance on a list of duties resembling those of a market research analyst to establish that the proffered position qualifies as a specialty occupation was misplaced. The director referred to the *Handbook* and stated that market research analysts research, compile, analyze market data and advise management and that the duties do not include acting on that data. The director found that the record failed to establish that the petitioner has a marketing division or staff to gather market data for analysis by the incumbent in the position. Additionally, the director refers to the *Handbook* in support of his conclusion that the petitioner does not engage in the type of business for which a marketing associate/market research analyst would be required on a full-time or part-time basis. The AAO does not agree with the director’s conclusions regarding the industries in need of market research analysts. Based on the discussion of the occupation in the 2004-2005 edition of the *Handbook*, it concludes that such analysts may reasonably be found in virtually every industry and business seeking to enhance the sales of its products and/or services. However, the AAO does share the director’s concerns regarding the employment that has been described by the petitioner.

The *Handbook*, at page 173, states the following with regard to the employment of market research analysts:

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

Because of the applicability of market research to many industries, market research analysts are employed in most industries....

The occupation of a market research analyst is a specialty occupation, normally requiring those seeking entry-level employment to have a master's degree in a related field. However, while the petitioner has identified its position as that of a market research analyst, its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention.

On appeal, counsel contends that specific duties of the position offered in combination with the nature of the petitioner's sophisticated business operations validates the petition for a market research associate. The petitioner submits an affidavit by its president attesting to the complexity of the petitioner's business. The petitioner states that is a "lean and effective market player in this gigantic and sophisticated market and maintains an advanced marketing approach." The petitioner provides a more detailed job description. The petitioner states that these duties include "gathering and analyzing data on customer preference, product prices, purchase behavior of customers, sales strategies, and different methods of marketing and distribution."

Counsel refers to the *Handbook* and notes that the knowledge required to perform the duties of a market research analyst is usually associated with a baccalaureate degree.

The record does not support the alleged complexity of the duties of a market research analyst.

The petitioner has offered a more expansive description of the duties of its proffered position than it provided in its initial petition. However, it has not established that the proffered duties are those of a market research analyst. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As a whole, the *Handbook's* information on market research analysts conveys that their work is characterized by the design and implementation of data-collection methodologies, data collection, and precise data analysis, at a level of expertise that most often requires a master's degree. Note, for instance, this statement at page 174 of the *Handbook*:

In addition to being required for most market and survey research jobs in business and industry, a master's degree is usually the minimum requirement for a job as an instructor in junior and community colleges.

Many of the duties described by the petitioner are not those of a market research analyst such as maintaining assigned account records; responsible for some accounts payable, managing accounts receivable; and performing posting of cash receipts and expenses and communicating with manufacturers abroad and with customers in the U.S. The information provided by the petitioner does not establish that the beneficiary's involvement with marketing research would be on such a specialized methodological and analytical level, or that it would require a master's degree in marketing or a related specialty. The record provides no information about the specific research and analytic methodologies that the beneficiary would employ and the specialized knowledge that she would have to apply in their use. There are no specifics about any of the job functions upon which the petitioner relies for specialty occupation status.

The petitioner provided documents establishing receipt of one shipment of bicycle helmets from China. The petitioner contends both that it is a new company on the Form I-129 and that it is one of the premium suppliers in the bike accessories market. The submitted company product catalogue does not contain the name of the petitioner. The record does not contain evidence of the petitioner's customers. The petitioner has not provided a list of customers or competitors from which to gather research or to conduct surveys. 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)).

The petitioner's description of the duties of its position are not of a market research analyst. The AAO has determined that the performance of those duties do not meet the statutory definition of a specialty occupation -- employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds the petitioner has failed to establish that it will employ the beneficiary in a specialty occupation.

Additionally, the *Handbook* indicates that a master's degree is the minimum requirement for private sector market research and survey jobs. The petitioner indicated that the proffered position requires a bachelor's or higher degree. The petitioner submitted a copy of the beneficiary's bachelor's degree in business administration. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Therefore, the petitioner's requirements for the job, a bachelor's or higher degree without further specification, fail to qualify the position as a specialty occupation.

The petitioner asserted that the beneficiary was well qualified for the position because she had a bachelor of arts in marketing. The record reflects, however, that the beneficiary obtained a bachelor of business administration from the University of Oklahoma in 2000. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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.