

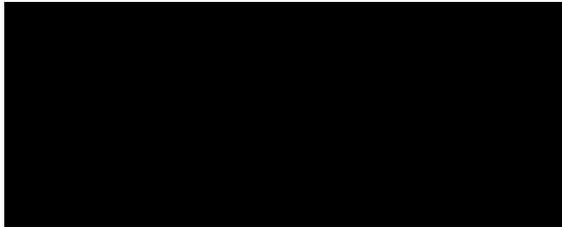
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U.S. Citizenship
and Immigration
Services

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DN

FILE: WAC 04 086 50445 Office: CALIFORNIA SERVICE CENTER Date: **OCT 07 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 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 a jewelry manufacturing business that seeks to employ the beneficiary as a business/market research analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence, including copies of pages from the petitioner's new color brochure, copies of recent jewelry orders, and Internet job postings.

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 business/market research analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 21, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: researching market conditions in local, regional, or national area; establishing research methodology and design format for data gathering, such as surveys, opinion polls, or questionnaires; examining and analyzing statistical data to forecast future business trends for potential sales of products; analyzing business trends and developing strategies; developing and implementing procedures for identifying advertising needs; compiling and analyzing existing financial records, growth quality of management, and potential financial risks; preparing a comprehensive market study of local, national, and international industries and competitors; and assisting with the development, refinement, and/or standardization of tools, methodologies, and procedures for data and information collection, manipulation, reporting, and storage. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, marketing, or a related field.

The director found that the proffered position was not a specialty occupation because the job is not a market research analyst position; it is similar to advertising, marketing, promotions, public relations, and sales manager positions. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is a part-time market research analyst. Counsel states further that the AAO reversed the denials of two similar petitions, and cites to a court decision to state that the petitioner's size bears no rational relationship to the need for a professional. Counsel submits Internet job postings to show that the position of market research analyst is common to the industry. Counsel also states that the proposed duties are so specialized and complex as to require a bachelor's degree in a relevant field.

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 turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a 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.

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)).

The AAO does not concur with the petitioner that the proffered position is that of a market research analyst, a position that, in business and industry, normally requires a master's degree in business administration, marketing, statistics, communications, or some closely related discipline. See the *Handbook*, 2004-2005 ed. at 174. In this case, the proffered position does not require a master's degree. Furthermore, although the

petitioner's president states in his January 21, 2004 letter that the beneficiary would report directly to him, the petitioner's organization chart reflects that the beneficiary would report to the marketing head, who, in turn, reports to the business manager, who, in turn, reports to the vice president, who, in turn, reports to the president. The record contains no explanation for this inconsistency. 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). 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Furthermore, although counsel states in his April 16, 2004 letter that the proffered position is a newly created position, it is not clear how the beneficiary's duties differ from the petitioner's marketing head, and from the business manager, who was previously granted H-1B status. It is noted that the record does not contain a copy of the approved petition and supporting documentation for the petitioner's business manager. As discussed above, the petitioner's organizational hierarchy is unclear. 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)).

Counsel states on appeal that the AAO "reversed the denials" of two similar petitions. The record of proceeding does not contain copies of such petitions. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for business analysts. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. One of the advertisers is the largest operator of leased fine jewelry departments in department stores throughout the United States. The proposed duties entail participating in cross-organizational process analysis and design teams. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described for the advertised position. Another advertiser is one of the world's premier watchmakers with over 1,400 employees. The proposed duties entail compiling and analyzing sales information for the petitioner's chain and department store business. It is noted that this advertisement does not stipulate a bachelor's degree in a specific specialty. In view of the foregoing, the advertisements have no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the record indicates that the proffered position is a new position, the petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

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.