

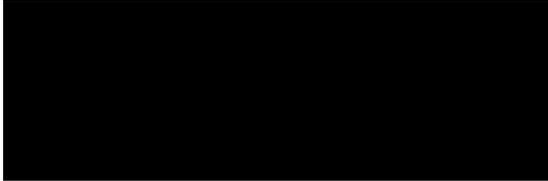
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U.S. Citizenship  
and Immigration  
Services

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FILE: SRC 05 108 50673 Office: TEXAS SERVICE CENTER Date: **AUG 18 2006**

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:

SELF-REPRESENTED

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, Chief  
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 landscaping business that seeks to employ the beneficiary as a marketing specialist. 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, the petitioner submits a brief and additional information including a copy of the Market and Survey Researchers job category from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*.

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 marketing specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 21, 2005 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: determining information needs and designing processes for data collection and data analysis; presenting data information to senior and executive staff members; conducting primary research projects including quantitative and qualitative studies to determine customer needs and to answer marketing, sales, and operations information requests; recommending best market research methodology to fulfill company data/information objectives and requirements; developing a competitive intelligence function to support industry analysis, trends reporting, and competitive analysis; preparing and issuing reports and analyses on market trends; conducting focus groups and providing summary reports and conclusions; and working with vendors and partners in the development, management, and analysis of databases and market research projects. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, marketing, or an equivalent thereof.

The record's descriptions of the proffered position and the duties comprising it are limited to generalized functions that the petitioner has ascribed to the position, such as "determining information needs, designing processes for data collection, data analysis, turning data into information, and presenting information to senior and executive staff members"; "conducting primary market research projects to determine customer needs, and answers marketing, sales and operations information requests, includes both quantitative and qualitative studies"; and "[r]ecommend best marketing research methodology to fulfill company data/information objectives and requirements." The petitioner has not identified applications of specialized knowledge that actual performance of the position's functions would involve, and has not provided details of concrete matters upon which the beneficiary would work. Nor has the petitioner explained or provided documentary evidence to establish how the beneficiary's actual substantive work would require at least a bachelor's degree level of knowledge in a specific specialty.

A position's qualification as a specialty occupation under the related statute and regulations is not accomplished by a petitioner's composing general duties that align with general duties that the *Handbook* or other DOL resources ascribe to a particular occupational category, for it is the actual performance requirements that determine the type and level of educational credentials necessary for a particular position. As a consequence of the lack of detail about the actual substantive work and associated educational requirements of the proffered position, the record lacks a reasonable basis for the AAO to conclude that the evidence of record satisfies any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director found that the proffered position was not a specialty occupation because the petitioner has not demonstrated that it is so complex or unique as to require a bachelor's degree. 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, the petitioner states, in part, that the petitioner has satisfied three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner states that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, that the degree requirement is common to the industry in parallel positions among similar organizations, and that 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.

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 DOL's *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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Although information in the *Handbook*, 2006-2007 edition, indicates that a market and survey researcher may qualify as a specialty occupation, the AAO does not concur with the petitioner that the proffered position is a specialty occupation. The petitioner's president limits his description of the proposed duties to exclusively generic terms that do not convey either the content of the actual work that the beneficiary would perform or that the actual work performance would involve the critical and practical application of a bachelor's degree level of knowledge in a specific specialty, as required by statute and regulation to establish a specialty occupation. The proposed duties consist of generalized functions that do not establish the level of knowledge that would be required when actually performed upon this particular petitioner's business matters, matters about which the record here contains negligible substantive information. In view of the foregoing, the position does not satisfy the regulatory requirement for eligibility as a specialty occupation under the first criterion.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for marketing specialists. 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. The majority of the advertisements are for marketing specialists in the finance, information technology, and marketing industries. The petitioner's industry, however, is not represented. Thus, the advertisements are not probative.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position; and the duties that comprise the proffered position are described in generalized terms that do not establish the position as sufficiently unique or sufficiently complex to require a bachelor's degree level of knowledge in a specific specialty.

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 petitioner's president indicates that the proffered position is a new position, the petitioner, therefore, has not established the criterion 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.

The proposed duties are described in generalized terms that do not demonstrate the level of specialized knowledge that may be required to perform them. Consequently, 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.