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FILE: WAC 04 215 53049 Office: CALIFORNIA SERVICE CENTER Date: **AUG 29 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:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn. The matter will be remanded for entry of a new decision.

The petitioner is a high tech equipment distributor/wholesaler. It seeks to employ the beneficiary as a market research analyst and 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 on the ground that the record failed to establish that the proffered 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a company that undertakes turn-key assembly production line projects, mainly in China, in the industry of microwave, hybrid T/R modules, optoelectronics, SAW filters, MEMS,

power devices, MCMs, etc. The petitioner states that it has been in business since 1990, has four employees at its corporate office, and operates three branch offices and two service centers in China. The petitioner's federal income tax return for 2003 lists gross receipts that year of \$4,173,251. The petitioner proposes to employ the beneficiary as a part-time market research analyst for three years, at a wage rate of \$18.00/hour, working 20-30 hours/week. The job involves researching, analyzing and interpreting market conditions in China to determine how best to market the petitioner's products and services there. The duties of the position, and the percentage of time required by each duty, are listed by the petitioner as follows:

- 15% Design and execute comprehensive market research surveys, including questionnaire design, data collection strategies, and analysis plans.
- 20% Analyze data using online and desktop tools to create presentations of findings.
- 15% Create concise reports and make presentations that effectively communicate research findings to management.
- 10% Develop research programs such as customer satisfaction, branding, product feature requirements, and product pricing.
- 20% Assist management with pricing analysis.
- 5% Conduct competitive intelligence across [the company's] product areas.
- 5% Maintain professional and technical knowledge by attending educational workshops, reviewing professional publications, establishing personal networks, and participating in professional societies.
- 10% Special projects as assigned.

The petitioner states that it requires a master's degree in business administration, business management, or business marketing for the proffered position. The beneficiary is qualified for the position, the petitioner declares, by virtue of her master of science degree in management from the University of London on November 1, 2003, which followed a bachelor's degree in economics from Fu Dan University in China on July 1, 2001.

In his decision the director stated that, while some of the duties of the proffered position appeared to be those of a market research analyst, in accordance with the description of that occupation in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, the position could not be classified as a market research analyst for two reasons. The first was that the petitioner's business, as far as the record showed, did not have the operational scope or organizational complexity that would require the services of a market research analyst. The second reason was that the petitioner was not engaged in a type of business for which a market research analyst would normally be required in a full-time, ongoing capacity. Based on the duties of the job the director found that the proffered position is similar to that of a marketing manager, as described in the *DOL Handbook*. According to the *Handbook*, the director pointed out, a bachelor's degree in a specific specialty is not a normal, industry-wide minimum requirement for entry into the occupation. Nor was the director persuaded by the evidence of record that the proffered position qualifies as a specialty occupation under any other criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in finding that the duties of the proffered position are not those of a market research analyst. Counsel points to information in the *DOL Handbook* refuting the director's finding that the petitioner's business is not the type of company that would employ a market research analyst, and asserts that the evidence of record does not back the director's finding that the petitioner does not have the organizational complexity to support the employment of a market research analyst.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO does not agree with the director that the duties of the proffered position are most similar to those of a marketing manager, as described in the *Handbook*. The AAO determines that the duties of the position accord with the *Handbook's* description of a market research analyst. The occupation is described as follows in the DOL *Handbook*, 2006-07 edition, at 175:

*Market, or marketing, research analysts* are concerned with the potential sales of a product or service. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze statistical data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need. Often, they design telephone, mail, or Internet surveys to assess consumer preferences. They conduct some surveys as personal interviews, going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys under the market research analyst's direction.

After compiling and evaluating the data, market research analysts make recommendations to their client or employer on the basis of 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 also may 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.

Based on the documentation of record – including a profile of the petitioner's business activities in the United States and China, photographs of the business premises in both countries and the high tech products the company markets, company brochures describing its product selection, the federal tax return documenting the company's earnings of over \$4 million in 2003, and an example from the petitioner of the type of market research analysis the beneficiary would perform – the AAO concludes that the beneficiary would perform the duties of a market research analyst in the proffered position.

With respect to the educational requirements for market research analysts, the *Handbook* states the following:

A bachelor's degree is the minimum educational requirement for many market . . . research jobs. However, a master's degree may be required, especially for technical positions . . . .

Market . . . researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline . . . .

In addition to completing courses in business, marketing, and consumer behavior, prospective market . . . researchers should take other liberal arts and social science courses, including economics, psychology, English and sociology . . . . [C]ourses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful . . . .

*Id.* at 176. In view of the foregoing information, the AAO concludes that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Based on all the evidence of record, however, the AAO determines that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specialty, which qualifies the position as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(4).

The director's decision denying the petition on the ground that the proffered position is not a specialty occupation must therefore be withdrawn.

Before the petition can be approved, however, it must be established that the beneficiary is qualified to perform services in the specialty occupation. To be qualified to perform services in a specialty occupation, the beneficiary must meet one of the following criteria enumerated in 8 C.F.R. § 214.2 (h)(4)(iii)(C):

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record indicates that the beneficiary received a bachelor's degree in economics from Fu Dan University in China on July 1, 2001, and a master of science degree in management from the University of London on November 1, 2003. There is no educational credentials evaluation report in the record, however, establishing that the beneficiary's degree(s) is (are) equivalent to a baccalaureate and/or higher degree in a specialty from an accredited U.S. college or university.

The petition will be remanded for the director to make a determination on this and any other issue relating to the beneficiary's qualifications to perform services in the specialty occupation. The director may afford the petitioner reasonable time to provide pertinent evidence. The director shall then issue a new decision based

on the evidence of record relating to the beneficiary's qualifications. As always, the burden of proof rests with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision of May 2, 2005 is withdrawn. The petition is remanded to the director for entry of a new decision. If adverse to the petitioner, the decision shall be certified to the AAO for review.