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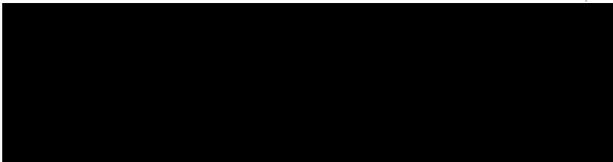
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FILE: WAC 04 222 53261 Office: CALIFORNIA SERVICE CENTER Date: JUN 12 2006

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 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 sustained. The petition will be approved.

The petitioner is the owner of six restaurants and 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 basis that the proposed position does not qualify as a specialty occupation. On appeal, counsel submits a brief.

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 are 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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a market research analyst. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the RFE. According to this evidence the beneficiary would:

- Collect and analyze data on various demographical segments and consumer food preferences and buying habits for restaurant suitability;
- Design and analyze research data from surveys on opinions and preferences affecting potential success;
- Identify procedures for advertising, pricing, and marketing improvements;
- Forecast and monitor market and industry trends affecting the restaurant business;
- Measure marketing success and assess customer satisfaction;
- Coordinate with marketing executives and professionals in U.S. and in the parent company in Japan to collect and review relevant customer data; and
- Finalize and submit reports to management on recommendations through oral and visual presentation.

The petitioner requires a minimum of a bachelor's degree for entry into the proposed position.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proposed position are essentially those of a market research analyst. The *Handbook* does not, however, indicate that a degree in a specific field is required. The petitioner has not, therefore, established that a bachelor's or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has established, however, 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 bachelor's or higher degree. The duties are specialized and complex in nature and are normally performed by individuals who have obtained a bachelor's level education, or its equivalent, in such fields as marketing or finance.

The record establishes that the proposed position includes various market research and analysis functions that exceed the scope of a typical market research analyst position. The AAO notes that the beneficiary will work as part of a national team and report to the petitioner's director of marketing and site director for development and marketing and that this team will give recommendations to an outside advertising consultant who will develop and implement an advertising campaign for the petitioner. Taking these factors into consideration, as well as the market research and analysis functions of the job, the AAO is persuaded that the nature of the specific duties of the proposed position is specialized and complex and that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in marketing or a related field. The petitioner has, therefore, satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The proposed position is a specialty occupation.

The director did not comment on the beneficiary's qualifications to perform the duties of the proposed position as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The beneficiary holds a bachelor's degree in finance from Portland State University. The *Handbook* does not indicate that a degree need be in a particular field to perform the duties of the proffered

position. The beneficiary's degree in finance includes coursework that the *Handbook* indicates is important to perform the duties of the occupation. The beneficiary's degree is closely related to the duties of the proposed position. As such, the beneficiary is qualified to perform the duties of the position as she satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

As always, 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 sustained that burden and the petition shall accordingly be sustained.

**ORDER:** The decision of the director is withdrawn and the appeal is sustained. The petition is approved.