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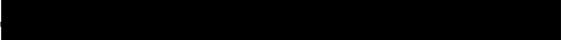
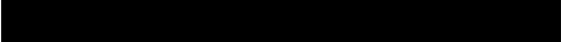
**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 04 094 51688 Office: CALIFORNIA SERVICE CENTER Date: **JUN 15 2006**

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, 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 non-profit organization and seeks to employ the beneficiary as a market research analyst. The petitioner endeavors to classify the beneficiary 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 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 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking 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 director’s request for evidence. According to this evidence the beneficiary would:

- Analyze past data regarding programs offered to evaluate their effectiveness, the desirability of the programs, and to make recommendations for new programs;
- Devise methods and procedures for gathering data to assess the types of competition facing the petitioner, vis a vis other non-profits targeting their efforts in the area of youth leadership training, the types of programs that will attract funding and donations, and the types of programs that would encourage parents to enroll their children in the petitioner’s after school programs;
- Examine the trends of children after school, and the effects of latchkey children to determine the best marketing approach to encourage children to participate in these programs;
- Analyze data and financial figures to determine the best avenues of marketing for exposure to enhance visibility and attract donations and funding;
- Prepare reports and marketing strategies; and
- Gather and evaluate data on programs and preferences to increase eligibility for grants.

The petitioner requires a minimum of a bachelor’s degree in business administration, economics or statistics for entry into the proffered position, but notes that in reality, a graduate degree in economics, business administration, economics or statistics is the normal minimum entry level requirement.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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 information about the duties and educational requirements of particular occupations. The duties of the proffered position are more closely related to those performed by advertising, marketing, promotions, public relations, and sales managers as discussed in the *Handbook*, not market research analysts as stated by the petitioner. The *Handbook* notes that market research analysts are concerned with the potential sale 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 and often design telephone, mail, or Internet surveys to assess consumer preferences. After compiling data, market research analysts evaluate them and make recommendations based upon their findings. They provide a company's management with the information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information provided may be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying a company's operations. These are not the duties to be performed by the beneficiary in a non-profit organization whose purpose is to create balance and stability for students through Youth Leadership Training.

A review of the duties to be performed by the beneficiary, as described by the petitioner, indicates that the beneficiary would review data on the programs offered by the petitioner to determine the effectiveness of the programs and to make recommendations for development of new programs targeting underprivileged children. The beneficiary would consider what other non-profits are doing in regard to youth leadership training, and determine the types of programs that would attract donations and funding and enrollment in their programs. She would then determine the best marketing approaches for attracting enrollment and increasing the petitioner's visibility for attracting funding. She would evaluate programs to increase eligibility for grants. As previously noted, these duties are more closely related to duties performed by marketing managers/personnel, and do not involve pure market research. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into the aforementioned positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* further notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many

managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. In support of that assertion, the petitioner provided copies of sixteen job advertisements for researcher assistants or analysts. The petitioner submitted 13 job advertisements to establish that a bachelor's degree is normally required for entry into the position of a market research analyst, but not to establish that a degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Those advertisements, therefore, are of little evidentiary value. Three advertisements were submitted to establish that a degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Of the three advertisements submitted to establish this premise, none were from organizations similar in nature and scope to that of the petitioner. Further, the duties to be performed in the advertised positions are not similar to those to be performed by the beneficiary. The evidence presented does not establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree for the offered position as this position is new with the organization. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties appear to be routine for marketing positions in the petitioner's industry. The petitioner has, therefore, failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.