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U.S. Citizenship
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Services

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FILE: WAC 04 255 52981 Office: CALIFORNIA SERVICE CENTER Date: JUL 14 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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a real estate management and development firm, with six employees. It seeks to hire the beneficiary as a market analyst. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

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

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a market analyst. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s August 25, 2004 letter in support of the petition and its December 16, 2004 response to the director’s request for evidence, which includes a copy of its organizational chart. At the time of filing, the petitioner indicated that the beneficiary would analyze potential development projects, requiring him to:

- Provide comprehensive marketing studies focusing on such areas as competitor analysis (concentrated on the economic and financial status of the company within a wide range of development projects that the petitioner owns, manages or seeks to engage in), demographic studies (i.e., reports concerning the different types of individuals and businesses most likely to retain the petitioner’s property management services, in addition to comprehensive research and analysis of potential real estate opportunities within new markets) and other related market studies that will enable management to make critical business decisions based on all available market, economic and business-related data;
- Prepare a series of statistical, economic and other related analyses pertaining to the proposed and ultimate acquisition of varied properties and development projects; and
- Conduct specific analysis governing such factors as tax aspects, budgetary factors, regulatory matters, zoning ordinances, and other similar types of areas.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) – a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the Department of Labor’s *Occupational Outlook*

Handbook (Handbook), on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree and whether the industry's professional association has made a degree a minimum entry requirement.

In his denial, the director indicated that he did not find the record to establish that the beneficiary would be employed as a market research analyst by the petitioner, determining that the petitioner's business did not have the organizational complexity to support a market research analyst or operate the type of business to require one. The AAO does not agree. It finds the director to have erred in denying the instant petition based on the structure and type of the petitioner's business.

The 2006-2007 edition of the *Handbook* indicates that the work of marketing research analysts is concerned with the potential sales of products or services and that they provide a company's management with information needed to make decisions on the promotion, distribution, design and pricing of products or services. As a result, the AAO finds market research to be applicable to virtually any industry or business seeking to improve its market share and profits. The fact that the petitioner is a relatively small real estate management and development firm does not preclude it from engaging in the type of market research activities described by the *Handbook*. Accordingly, the AAO withdraws the director's finding in this regard.

However, while the AAO finds that the petitioner's is a business that could require the services of a marketing research analyst, it does not find the record to establish that the proffered position, as outlined by the petitioner, is that of a market research analyst. As discussed in the 2006-2007 *Handbook*, market or survey researchers, also known as market or marketing research analysts are:

[c]oncerned 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 data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need

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 giveaways¹

The petitioner, however, has described employment that would inform its business decisions, rather than assist it in marketing its services. In its response to the director's request for evidence, the petitioner indicated that it required the beneficiary's services to identify appropriate development opportunities, by providing information on its competitors, demographic analysis to indicate which projects would offer the highest rate of return, and information as to the tax implications, depreciation advantages, budgetary issues, regulatory

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos013.htm.

aspects, zoning ordinances and any other factors that would ultimately influence a decision to undertake a particular project.² Based on this further discussion of the role the beneficiary would play in the petitioner's organization, the AAO finds the market research and analysis duties of the proffered position to be similar to those performed by financial analysts, employment that is addressed by the *Handbook* under the occupational title of financial analysts and personal financial advisors.

As indicated by the *Handbook*:

[f]inancial analysts and personal financial advisors provide analysis and guidance to businesses and individuals to help them with their investment decisions. Both types of specialists gather financial information, analyze it, and make recommendations to their clients *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest

Financial analysts . . . work for banks, insurance companies, mutual and pension funds, securities firms, and other businesses, helping these companies or their clients make investment decisions. Financial analysts read company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company's value and to project its future earnings Usually financial analysts study an entire industry, assessing current trends in business practices, products, and industry competition. They must keep abreast of new regulations or policies that may affect the industry, as well as monitor the economy to determine its effect on earnings.

Financial analysts write reports and make presentations, usually making recommendations to buy or sell a particular investment or security Other analysts use the data they find to measure the financial risks associated with making a particular investment decision.³

While the petitioner's business decisions are focused on real estate and development, rather than the acquisition of companies or industries, the AAO, nevertheless, finds the duties of the proffered position to require the beneficiary to function in much the same manner as a financial analyst. In his capacity as the petitioner's market analyst, the beneficiary would provide the petitioner with the industry-related data and financial information required to make its real estate decisions, advising the petitioner on the tax implications, and depreciation advantages, and budgetary issues related to potential real estate investments, as well as related regulations and zoning ordinances. Although the duties of the proffered position are not an exact fit with those of financial analysts, the AAO concludes that the occupations are enough alike to require the beneficiary to have skills comparable to those of a financial analyst and, therefore, to require a similar level and type of academic preparation.

⁴ To establish its real estate development/management operations, the petitioner has submitted materials from its website identifying properties it has available for lease, a separate list of the companies it or an affiliate owns or manages, and a copy of its organizational chart that identifies its employees by name, title and responsibilities.

³ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos259.htm.

With regard to the requirements imposed on individuals seeking employment as financial analysts, the *Handbook* reports the following:

A college education is required for financial analysts Most companies require financial analysts to have at least a bachelor's degree in business administration, accounting, statistics, or finance. Coursework in statistics, economics, and business is required, and knowledge of accounting policies and procedures, corporate budgeting, and financial analysis methods is recommended

Based on the above discussion, the AAO finds the petitioner to have established the proffered position of market analyst as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

For reasons related in the preceding discussion, the petitioner has established the proffered position as a specialty occupation. The petition may not be approved, however, as the record does not reflect that the beneficiary is qualified to perform the duties of the specialty occupation.

The petitioner has submitted copies of the beneficiary's 1987 diploma from the Philippine School of Business Administration, his academic transcripts from that institution, and an evaluation of the beneficiary's academic credentials from [REDACTED] in Norman, Oklahoma, which finds him to hold the equivalent of a U.S. baccalaureate degree in business administration from an accredited university in the United States. However, a baccalaureate degree in business administration alone is insufficient to qualify the beneficiary to perform the duties of a specialty occupation. CIS does not recognize a generalized business degree that does not have a specific concentration in marketing, finance or some other specific area of business as a degree required to perform a specialty occupation. See *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). A petitioner seeking to qualify a beneficiary with a general degree in business administration must clearly establish that the beneficiary's studies include an area of concentration directly related to the duties of the specialty occupation. Accordingly, as the ICE evaluation of the beneficiary's degree in business administration does not indicate that it has a concentration in a specific academic field, it does not prove that he is qualified to perform the duties of a specialty occupation.

The petitioner has submitted two opinions – one from a professor of economics at the University of California, Los Angeles (UCLA) and the other from a professor of management at Loyola Marymount University – as proof that the beneficiary's degree equivalency in business administration is in a field directly related to the proffered position. These opinions find the duties of the proffered position to be those of a market research analyst and the beneficiary's degree equivalency in business administration to be appropriate for employment as a market researcher. The proffered position is not, however, that of a market research analyst. Instead, as previously discussed, it is more closely aligned to the occupation of financial analyst. Accordingly, the professors' opinions are not relevant to these proceedings.

The director's decision will be withdrawn and the case remanded to the director for a decision as to whether the beneficiary qualifies to perform the duties of a specialty occupation. The director may afford the

petitioner a reasonable opportunity to submit evidence relating to the beneficiary's qualifications. The director shall then issue a new decision based on the evidence of record, as it relates to the statutory and regulatory requirements for H-1B nonimmigrant visa eligibility

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of December 30, 2004 is withdrawn. The petition is remanded for entry of a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.