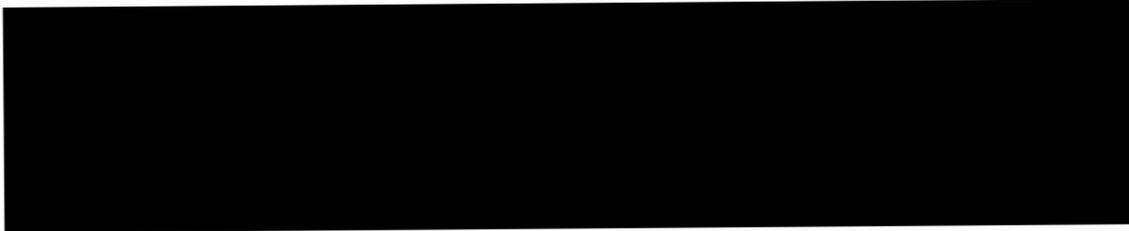




U.S. Citizenship
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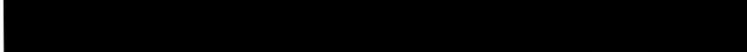
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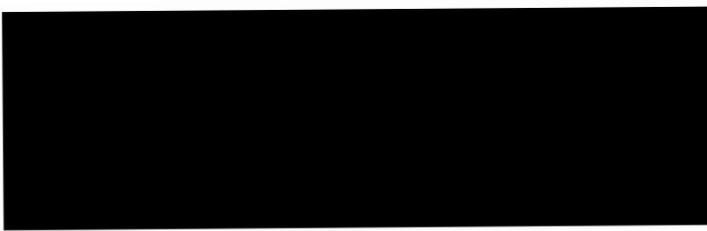


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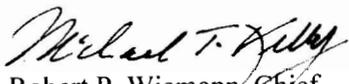
FILE: WAC 04 130 50296 Office: CALIFORNIA SERVICE CENTER Date: JUL 14 2006

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 
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center 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 an importer and wholesale of shrimp and other seafoods that seeks to employ the beneficiary as a market research analyst. The petitioner, therefore, 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 is not a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

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) 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 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 market research analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail the following:

- Analyzing statistics and other data in the industry to forecast future marketing trends; develop pricing strategies taking into account the type of product being offered; researching how to expand the market at a lower price as well as the level of competition within.
- Contacting suppliers and vendors to tell the market situation locally, regionally, and internationally to increase the potential sales of products and find out the pricing, demand, supplies, and future trends.
- Buying shrimp, fish, scallops, squid, and lobsters from Latin American countries that will be sold in the United States and Europe.
- Selling seafood products in the United States and Europe and updating the sales price list of the white shrimp.

The petitioner endeavors to continue its employment of the beneficiary as a market research analyst.

In the denial letter, the director concluded that many of the proposed duties reflect those of a market research analyst as that occupation is described in the 2004-2005 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). However, the director was not persuaded that the beneficiary would perform the proposed duties, which he found to qualify as those of a specialty occupation. Sole reliance on a list of duties resembling those of a market research analyst taken from the *Handbook* to establish that the proposed position qualifies as a specialty occupation is misplaced, the director stated. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties of the proposed position combined with the nature of the petitioning entity's business operations are factors that are considered, and that each position must be evaluated based on the nature and complexity of the job duties. The director stated that the beneficiary's degree in a related area does not guarantee that the proposed position is a specialty occupation; and that performing incidental specialty occupation duties is insufficient to establish that the proposed position is a specialty occupation. The director found that the petitioner does not have the organizational complexity or engage in the type of business or industry in which market research analysts are employed. The director concluded that the proposed duties are more similar to those of a marketing manager as that occupation is depicted in the *Handbook*, and that the *Handbook* reveals that this occupation does not require a bachelor's degree in a specific specialty. The director found the petitioner's job description of the beneficiary's duties generic in nature, providing no detail as to the specialized or complex nature of the proposed position. According to the director, the petitioner submitted no evidence that would corroborate the assertion that it normally requires a bachelor's degree for the proposed position. The director concluded that no evidence demonstrated that the proposed duties exceed those of a marketing manager.

On appeal, counsel states that the submitted evidence indicates that the offered position is that of a market research analyst and that the *Dictionary of Occupational Titles (DOT)* and the *Handbook* reveal that a market research analyst qualifies as a specialty occupation as it requires a bachelor's degree. Counsel maintains that CIS previously approved the offered position as a specialty occupation. Counsel states that *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) indicates that a petitioner's size is irrelevant in determining the need for a professional. According to counsel, the petitioner is a subsidiary of Red Chamber Co., which has \$700 million in sales. Counsel asserts that the nature of the petitioner's business and the industry in which it is engaged in are irrelevant factors in determining whether it has a need for a market research analyst. Counsel states that the offered position is not that of a marketing manager, and the director initially conceded that the proposed duties "appear to reflect some of those performed by [m]arket [r]esearch [a]nalysts." Counsel asserts that the director's request for evidence never sought evidence regarding whether the offered position qualified as a specialty occupation. Counsel states that the director previously approved the offered position as a specialty occupation on two occasions.

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.

Counsel asserts that CIS approved two petitions that had been previously filed on behalf of the beneficiary by the petitioner.

The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same assertions and evidence that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988)

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approvals do not preclude CIS from denying an extension of the original visa petition based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The AAO concurs with the director's conclusion that the evidence does not provide a basis for approving the petition. However, the AAO finds that a position involving some non-specialty-occupation duties does not

necessarily preclude it from being a specialty occupation. A position may require a baccalaureate degree or an advanced degree in a specific academic field even though some of the position's duties do not. The 2006-2007 edition of the *Handbook* does not suggest that a particular kind of business would not need a market research analyst, or that a business must have a certain organizational structure in order to substantiate the need for a market research analyst. Notwithstanding this, the AAO does not find that the proposed position qualifies as a specialty occupation.

The AAO finds that the proposed duties are a combination of those of a market research analyst and a marketing manager. The *Handbook*, a resource that the AAO routinely consults, states the following about market research analysts:

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 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 also might develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

The *Handbook* reports that a market research analyst is not required to hold a baccalaureate degree in a specific academic field, as it states:

A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree may be required, especially for technical positions, and increases opportunities for advancement to more responsible positions.

The *Handbook* describes a marketing manager as follows:

Marketing managers develop the firm's marketing strategy in detail. With the help of subordinates, including *product development managers* and *market research managers*, they estimate the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets—for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy to help firms

maximize profits and market share while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services, and they oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

According to the *Handbook* employers do not require a marketing manager to possess a bachelor's degree in a specific specialty. It states:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

Counsel turns to the *DOT* to show that the offered position is a specialty occupation. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An specific vocational preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the director did not err in discounting the *DOT* information.

Based on the *Handbook's* information and the evidence in the record, the AAO finds that the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* reveals a bachelor's degree in a specific academic discipline is not required for a market research analyst or a marketing manager. Although the petitioner's March 24, 2004

letter states that the beneficiary will “continue to perform market research studies and analysis to determine the demand for [the] company’s services,” no evidence representing the beneficiary’s work product while employed with the petitioner has been submitted into the record. The beneficiary’s duties are described in exclusively generalized and generic terms that do not establish whether their actual performance involves practical and theoretical application of highly specialized knowledge. Thus, the AAO has no factual basis in which to determine whether the position that is offered here has such complexity or uniqueness as to require a bachelor’s degree in a specific specialty. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish 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 baccalaureate or higher degree. The *Handbook* reveals a bachelor’s degree in a specific discipline is not normally required for a market research analyst or a marketing manager position. The petitioner’s March 24, 2004 letter indicates that the petitioner seeks to continue the beneficiary’s employment there, and that the beneficiary will “continue to perform market research studies and analysis to determine the demand for [the] company’s services.” The AAO notes, however, that the petitioner submitted no samples of the beneficiary’s work product while employed with the petitioner. Neither the description of the beneficiary’s duties - which are limited and generalized - nor any other other evidence of record establishes the substantive work that the beneficiary actually performs. Thus, the AAO has no factual basis in which to determine whether the nature of the proposed duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the petitioner fails to establish the criterion at 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 on this ground.

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.