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U.S. Citizenship
and Immigration
Services

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JUL 17 2006

FILE: WAC 04 146 50446 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

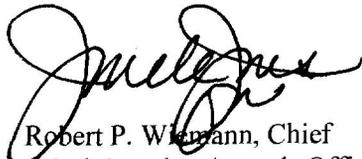
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 software consulting firm that seeks to employ the beneficiary as a market research analyst and to classify him 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 petitioner did not establish that the proposed position is a specialty occupation and that the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, the petitioner 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 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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

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

The petitioner lists the proposed position as a market research analyst. Evidence of the beneficiary's duties includes the Form I-129 with accompanying company support letter, the response to the RFE, and the

petitioner's brief on appeal. According to this evidence, the beneficiary's duties would include: conducting effective research coverage of regional markets with limited resources to identify and target consumer behavior, attitude, trends, companies and potential competitors within the Arab markets; identifying and studying segments/study samples of interested Arab users in different computer software services; determining the specific procedure to obtain and classify the relevant information; presenting the results of a marketing research study to management; assisting the general manager in assessing near and long term plans and strategies; performing analytical evaluations of competitors' products and their technical and financial capabilities within the Arab markets; monitoring market conditions, identifying market segments and determining cost benchmarks; preparing monthly and quarterly business reports regarding the results of the research and making recommendations on adjusting and modifying campaigns to achieve higher levels of performance; establishing methods and procedures in obtaining and updating large sets of market related data; coordinating all advertising activities and managing web-site content modifications; providing [REDACTED] with strategic web marketing analysis and recommendations on regional e-commerce trends to make [REDACTED] not only a growing Arabic news portal site, but also a unique source of managed information regarding the region's business activities. The petitioner stated that the position required a bachelor's degree in business administration and/or marketing.

The director found that the petitioner failed to establish that it was engaged in the type of business that typically required a full- or part-time market research analyst or that the petitioner had a staff to support the gathering of data for a market research analyst to analyze. The director also found that the petitioner had no staff to implement the suggestions of the market research analyst and that the position was more similar to that of a marketing manager. The director noted that the petitioner did not state how long the market research and analysis project would last and found that once the project was complete, the beneficiary would most likely perform the duties of a basic sales or marketing manager. The director further found that although the petitioner meant to increase its staff size in the future to implement any future marketing campaigns, the petitioner did not establish eligibility for the H-1B petition at the time of filing; and that the proposed position did not qualify as a specialty occupation. Finally, the director found that the beneficiary was not qualified to perform the specific duties of the position because he held a generalized degree in business administration.

On appeal, the petitioner asserts that the proposed position is that of a market research analyst. The petitioner asserts that the position will not require the beneficiary to engage in detailed pricing and marketing strategies, to ensure customer satisfaction, or to determine the demand for products. The petitioner asserts that the duties of the proposed position are substantially similar to those listed for market research analysts in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The petitioner further asserts that the AAO has approved petitions in the past for market research analysts. The petitioner also contends that once the marketing project is over, the beneficiary will not engage in basic sales marketing duties. The petitioner states that the size of the petitioner's business and the newness of the position should not determine whether a position qualifies as specialty occupation. Finally, the petitioner submits a re-evaluation of the beneficiary's academic credentials that finds the beneficiary to hold a bachelor's degree in business administration with a major in marketing.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has failed to establish that the proposed position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

As a preliminary matter, the AAO finds the director to have erred in concluding that the petitioner is not engaged in the type of business that would require a market research analyst. In that 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, market research is applicable to a broad range of industries and businesses seeking to improve their market share and profits. The fact that the petitioner is engaged in software development and consulting does not preclude it from engaging in the type of market research activities described by the *Handbook* as a means of increasing its business opportunities and earnings. Accordingly, the AAO withdraws the director's finding in this regard.

To determine whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. Based on the petitioner's description and a thorough review of the *Handbook*, the AAO concurs with the petitioner that the description of the proposed position reflects the duties of market research analysts, who, according to the *Handbook*, devise methods for obtaining data on past sales to predict future sales. According to the petitioner's description, the beneficiary will "identify market segments" and "establish methods and procedures to obtain and update large sets of market related data." Notwithstanding this, the AAO finds that the petitioner has not established that the proposed position is a specialty occupation.

The petitioner has failed to demonstrate that the position is one that qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1), a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. To determine whether the proposed position is a specialty occupation under this criterion, the AAO turns to the *Handbook's* discussion of the educational requirements for market research analysts. The *Handbook* indicates that employers require bachelor's degrees for market research analysts but not in any specific specialty. Thus, the petitioner has failed to establish that a bachelor's degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the proposed position.

The AAO turns next to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether letters or affidavits from companies or individuals in the industry attest that such companies "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 job announcements the petitioner has submitted are not sufficient to establish a degree requirement in parallel market research analyst positions among similar software development companies. The jobs described in these announcements are distinct from the instant position in several significant ways. The announcements either do not describe the job duties with sufficient particularity to determine if they are similar to the proposed duties, or are not from companies similar to the petitioner in their type of operations, number of employees, and amount of gross income. Accordingly, the AAO does not find the petitioner to have established that a degree requirement is common to the industry in parallel positions among similar organizations. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine if a

petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. In the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity and uniqueness of the proposed position and the specialized nature and complexity of the proposed duties. A petitioner satisfies the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific field of study. The petitioner submitted a list of the job duties for the proposed position but provided no further detail as to the unique or complex nature of the proposed position. This list submitted by the petitioner is not sufficient to establish that the proposed position is unique compared with other similar, but non-degreed, positions within the same industry or that its duties are normally associated with the attainment of a degree in a specific specialty. Neither has it provided the opinions of experts in the field or professional groups to support its assertions regarding the position's degree requirements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

No evidence contained in the record demonstrates that the proposed position is a specialty occupation. The petitioner has not overcome the director's decision in this regard. As to the beneficiary's qualifications, the AAO has determined that the petition cannot be approved on the basis that the proposed position is not a specialty occupation. **Therefore, it will not address the issue of the beneficiary's qualifications.** A beneficiary's credentials to perform a particular job are relevant only when a job is found to be a specialty occupation.

The burden of proving eligibility for the benefit sought remains entirely 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.