

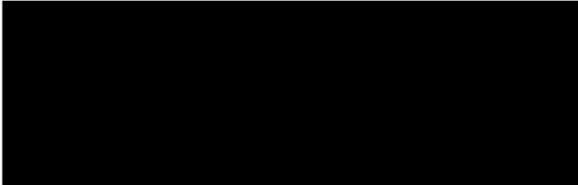


U.S. Citizenship
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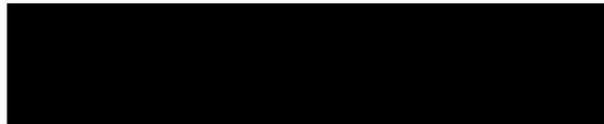
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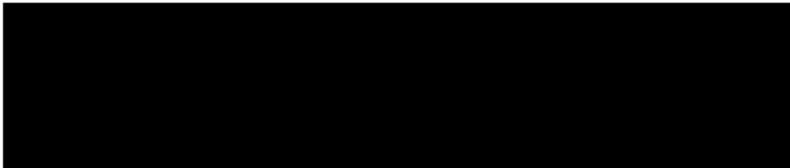
FILE: WAC 04 230 51720 Office: CALIFORNIA SERVICE CENTER Date: **MAR 03 2006**

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, Director
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 sustained. The petition will be approved.

The petitioner is a wholesale importer of restaurant small ware. It seeks to employ the beneficiary as a marketing 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 on the ground that the proffered position is not a specialty occupation. On appeal, the petitioner submits an appeal and additional 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) 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) 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 marketing 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: finding cost-efficient distribution solutions for the East coast; analyzing customer purchasing behavior based on historical data; handling special accounts such as understanding their market trends; providing support to sales, customer service, and purchasing to develop consistency and to emphasize customer needs, experience, and satisfaction; assisting in marketing events; and providing extensive Asian market experience. For the proposed position the petitioner requires a master's degree in business administration or marketing.

In the denial letter, the director concluded that the proposed duties are encompassed within the classification of a sales representative (wholesale and manufacturing), as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* indicates that a sales representative position is not a specialty occupation. Performing specialty occupation duties (such as a market research analyst) that are incidental to primary functions that are non-specialty occupation duties is insufficient to establish that the duties to be performed qualify as a specialty occupation, the director stated. The director found that the petitioner is not in an industry in which market research analysts are employed. The director determined that no evidence establishes any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that the director failed to consider the evidence. The petitioner distinguishes the proposed position from that of a sales representative, and states that the proposed position is that of a marketing analyst. The petitioner discusses the college coursework that is required for the proposed position.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to show that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. On appeal, the petitioner elaborated on the problems that the beneficiary will address, the research that will be conducted, the data that will be collected and analyzed, and the kind of surveys that will be designed. The record contains information about the petitioner's products and its clients. Based on the evidence in the record, the proposed position corresponds to that of a market research analyst, which the *Handbook* indicates requires at least a bachelor's degree in a relevant field such as marketing or an advanced degree in business administration, marketing, statistics, communications, or some closely related discipline.

The evidence in the record reflects that the beneficiary is qualified for the proposed position as he holds a master's degree in business administration from the University of Central Oklahoma, and a bachelor's degree

in business administration (with a major in marketing) from Oklahoma State University. Thus, the beneficiary qualifies for the proposed position.

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.

ORDER: The appeal is sustained. The petition is approved.