

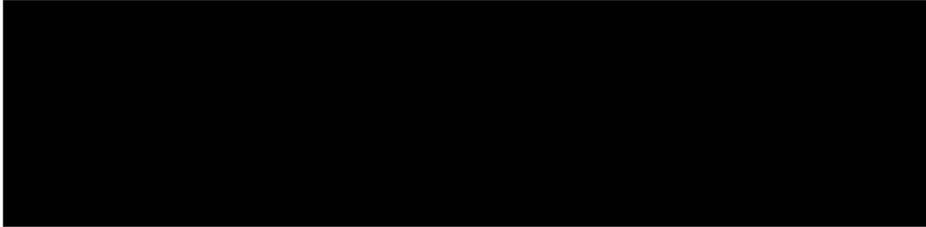
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**U.S. Citizenship
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Services**

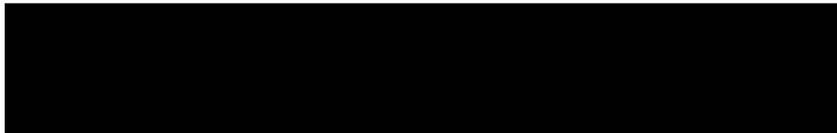
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FILE: WAC 04 242 51687 Office: CALIFORNIA SERVICE CENTER Date: **MAR 21 2006**

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, Director
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 sustained.

The petitioner is an aluminum solutions provider that 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 § 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 evidence including the petitioner's payroll summary, a quarterly tax return, and a quarterly wage report.

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 market research analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 31, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: researching and analyzing market factors and data (including but not limited to economic, political, and social environments) to formulate sales, marketing strategies and increased market shares; analyzing financial inventory data pertaining to product sales, marketing factors, and logistics turnover rate to minimize inventory balance; presenting and communicating research data to the marketing department at the petitioner's headquarters to produce marketing materials for use in the U.S. markets; analyzing and comparing products and services from major competitors including price, product features, sales, and distribution options; conducting regression analysis to determine main factors that influence customers' buying decisions, focusing on corporate clients; performing sales forecasts on key product lines; performing the quarterly marketing budget; analyzing accounting and inventory data to determine product delivery throughout, order fulfillment, and carrier performance; identifying the most profitable customer group and presenting a monthly report to the sales manager; analyzing sales volume performance data using ACCPAC, Access, MS Office and SPSS; interpreting collected data and clarifying market needs for increased business opportunities; maintaining customer and product data using File Maker Pro; studying customer performance and buying patterns and conducting SWOT analysis on competitors; and preparing past and present order fulfillment statistical reports using various statistical methodologies. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration, marketing, economics, or a related field.

The director found that the proffered position was not a specialty occupation because the job is not a market research analyst position; it is a marketing manager position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also found that the following documentation had not been submitted as requested: the petitioner's quarterly wage reports for the last two quarters and its payroll summary W-2 and W-3 forms.

On appeal, counsel states, in part, that the proffered position is that of a marketing analyst, which is a highly complex position that requires both theoretical and practical knowledge to effectively perform the associated duties. Counsel states further that the petitioner is a subsidiary of [REDACTED] Group, the largest aluminum extruder in Asia, with annual revenue of over \$1.2 billion U.S. dollars, and that the petitioner is an importer and marketer of aluminum products supplied by this parent company. Counsel also states that the petitioner was established in 2004, not in 1990, as the director erroneously concluded. Regarding the petitioner's failure to submit the requested documentation discussed above, counsel states:

[T]he DE-6 Quarterly Wage Reports and Form 941, Quarterly Wage Reports for the last two quarters, Payroll Summary W-2s and W-3s were not received from the Employment Development Department from the California Department of Labor. However, since the Request for Evidence was submitted, those documents have been received. However, the Service must note that W-2s and W-3s will not be submitted as since [sic] all employees have only been hired since July 2004, these documents are not yet filed. They will not be available until next year when corporate documents are required by the State. . . .

The proffered position is that of a market research analyst. A review of the 2006-07 *Handbook* does not indicate that a bachelor's degree in a specialty is required for a marketing research analyst position and, therefore, not all market research analyst positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specialized and related area. As such, the petitioner has overcome the director's objections. The beneficiary in this case holds a foreign bachelor's degree in engineering and a U.S. master's degree in business administration. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations and that the beneficiary is qualified to perform the duties of the specialty occupation.

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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.