

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave. NW, Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



D2

FILE: WAC 05 005 53122 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 2006**

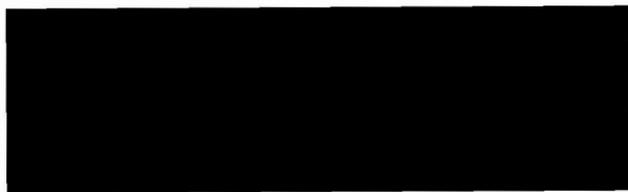
IN RE: Petitioner:



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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner provides consulting and management services to the hospitality industry. It seeks to employ the beneficiary as market research analyst and to continue his classification 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 record failed to establish that the proffered position qualifies as a specialty occupation.

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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a provider of management, consulting, and development services to the hospitality industry. The record shows that the petitioner had a total 158 employees at the time of filing. The petitioner's 2003 federal income tax return lists gross receipts for that year of \$117,946.96. The petitioner indicates that it manages thirteen properties in California, most of them limited service hotels, and plans to expand its business with additional management properties. To facilitate its expansion the petitioner states that it seeks to employ the beneficiary as a market research analyst to help management select properties, design and implement business strategies, and integrate acquired businesses. The duties of the position, and the percentage of the beneficiary's time they will demand, are described as follows in a letter accompanying the petition:

- 60% [The beneficiary] will compile and analyze statistical data to predict future openings, acquisitions and management. He will generate reports on potential markets and will gather data on competitors and analyze prices, sales, and methods of marketing and distribution. He will also devise methods and procedures for obtaining the data he needs by using telephone, mail, or Internet surveys to assess consumer preferences.
- 40% After compiling the data, the beneficiary will evaluate them and make recommendations based upon the findings. He will provide our company's management with information needed to make decisions on advisability of venturing into specific market segments. The information may also be used to determine the advisability of adding new properties either through acquisition or construction or otherwise diversifying the company's operations.

According to the petitioner, the minimum educational requirement for the proffered position is a bachelor's degree in business administration, or a closely related specialty. The beneficiary is qualified for the position, the petitioner declares, by virtue of his master of business administration from Washington University in St. Louis, granted on May 10, 2002. The beneficiary also has a bachelor of technology in chemical engineering from the Indian Institute of Technology in Kharagpur, India, granted on August 2, 1991.

In his decision the director stated that, while some of the duties of the proffered position appeared to be those of a market research analyst, in accordance with the description of that occupation in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, the position could not be classified as a market research analyst for two reasons. The first was that the petitioner's business operations, as far as the record showed, did not have the organizational complexity that would require the services of a market research analyst. The second reason was that the petitioner was not engaged in a type of business for which a market research analyst would normally be required in a full-time, ongoing capacity. Based on the duties of the job the director found that the proffered position is similar to that of a marketing manager, as described in the DOL *Handbook*. The director quoted information in the *Handbook* indicating that a bachelor's degree in a specific specialty is not a normal, industry-wide minimum requirement for entry into the occupation. There was no evidence in the record, the director indicated, that a degree in a specific field of study is a common requirement of the petitioner's industry in parallel positions among similar organizations. The record did not show that the proffered position is so complex or unique that a specialty degree is required to perform it, the director stated, or that the petitioner normally requires a degree in a specific specialty or its equivalent for the position. Nor did the record establish that the duties of the proffered position are so specialized and complex that they could

only be performed by an individual with baccalaureate or higher level knowledge in a specific specialty. The director concluded that the proffered position did not meet any of the alternative criteria enumerated at 8 C.F.R. § 214.2 (h)(4)(iii)(A) to qualify as a specialty occupation.

On appeal counsel reiterates the petitioner's contention that the beneficiary will be performing the duties of a market research analyst, not a marketing manager, in the proffered position. According to counsel, the duties of the job as described by the petitioner in its initial letter to the service center establish the nature of the position as a market research analyst. Counsel refers to information in the DOL *Handbook* that market research analysts normally require a master's degree, thus qualifying the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Factual discrepancies cited in the director's decision, counsel contends, are minor in nature, easily explained on appeal, and immaterial to the issue of whether the proffered position is a market research analyst and a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The occupation of market research analyst is described in the *Handbook*, 2006-07 edition, as follows:

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

With respect to the educational requirements for market research analysts, the *Handbook, id.*, states the following:

A bachelor's degree is the minimum educational requirement for many market . . . research jobs. However, a master's degree may be required, especially for technical positions . . . . Market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline.

Based on the foregoing information, the AAO concludes that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a market research analyst position. Though master's degrees in certain specialty fields may be necessary for some positions, baccalaureate degrees in a variety of disciplines may be a sufficient for entry into many market research positions. Accordingly, market research analysts do not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO agrees with the director, however, that the evidence of record does not establish that the duties of the proffered position are those of a market research analyst. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the performance demands of the position normally require a degree in a specialty for entry into the position. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

The petitioner's description of the proffered position is mostly generic language lifted directly from the DOL *Handbook*. It provides no details about the types of "potential markets" to be researched, the types of surveys to be conducted, or the "methods and procedures" the beneficiary would use to obtain essential data. The petitioner must do more than merely recite certain job duties of a market research analyst in the *Handbook*. It must show how those job duties will be performed in relation to its own business. Simply going on record without supporting evidence does not satisfy the petitioner's burden of proof. *See 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)). The record fails to establish that the beneficiary would be performing the services of a market research analyst, or any other position that requires a baccalaureate or higher degree in a specific specialty. The AAO determines that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because the record does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence in the record that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Nor does the evidence of record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Accordingly, the position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a baccalaureate or higher degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the evidence of record does not show that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. Thus, the position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record shows that the beneficiary was previously approved for H-1B classification pursuant to a petition filed by another U.S. employer. Aside from an uncorroborated statement from the petitioner, however, there is no documentary evidence of his job title and the nature of the duties he performed. Notwithstanding the approval of the prior H-1B petition, the current petition cannot be approved unless the record establishes current eligibility. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). The AAO is not required to approve applications or petitions in which eligibility has not been demonstrated merely because of a prior approval that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). For the reasons previously discussed, the record in the instant proceeding does not show that the proffered position qualifies as a specialty occupation.

For the reasons discussed above, the position proffered by the petitioner does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

**ORDER:** The appeal is dismissed. The petition is denied.