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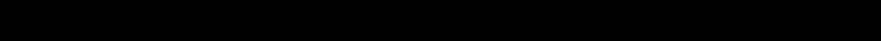
**U.S. Citizenship
and Immigration
Services**

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FILE: LIN 04 264 51838 Office: NEBRASKA 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 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 provider of hardware and software technology solutions 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 copies of degree certificates for three of the petitioner's employees.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. In a request for evidence, dated September 29, 2004, the director specifically requested documentary evidence of the "specific educational credentials" of the petitioner's employees to establish that the petitioner normally requires a degree. The petitioner failed to submit the requested documentation in response to the director's request for additional evidence. Therefore, the petitioner is precluded from submitting such evidence on appeal. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The degree certificates of three of the petitioner's employees submitted on appeal will not be considered by the AAO. Further, the AAO notes that the petitioner's attempted submission still does not comply with the director's direction that the petitioner submit certificates for individuals employed in the same position with parallel duties. On appeal, counsel submits certificates for the accountant and financial analyst, the president, and for another individual by the name of Gang Liu, who does not appear on the list of employees provided by counsel in her September 30, 2004 response. The certificates, therefore, would have no merit had they been timely submitted.

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 September 13, 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 market conditions in local, regional, and national demographics to determine the potential sales of services and products; designing and devising research strategies to identify unprofitable practices and to predict potential higher profit-yielding markets for the petitioner’s services and products; researching trends and gathering information on competitors’ practices and techniques; researching and analyzing past sales data to predict future sales; examining, analyzing, and utilizing economic data to forecast future marketing trends; compiling and identifying customer demands based upon the interpretation of statistical evidence gathered through surveys and market research; analyzing data and determining market potential in Taiwan and the Pacific Rim; formulating recommendations, policies, and plans to aid in market interpretation; advising on product placement, promotional features, and distribution methods; creating competitive pricing strategies; and assisting in the implementation of the most profitable business practices. The petitioner indicated that a qualified candidate for the job would possess a bachelor’s degree in marketing, economics, or business administration.

The director found that the proffered position was not a specialty occupation because the petitioner’s organizational hierarchy is unclear, namely that, as the petitioner already employs an international market research analyst and a marketing and sales manager, the exact nature of the proffered position is unclear. The director also noted that a previous petition filed by the petitioner for the same beneficiary for the position of management analyst was denied on August 31, 2004. 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).

On appeal, counsel states, in part, that the proffered position, which entails utilizing economic data gathered overseas and in larger metropolitan areas, are the complex duties of an international market research analyst. Counsel provides a list of the petitioner’s current employees and their position titles, including “(Domestic) Market Research Analyst” and “Marketing Manager,” and states that the beneficiary will be working in tandem with these employees.

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.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

At the outset, the AAO notes an inconsistency regarding petitioner's organizational hierarchy. In counsel's September 30, 2004 response to the director's RFE, counsel indicates that the petitioner's employee Joyce Chen occupies the position of "international market research analyst," which is the same position as the proffered position, while on appeal, counsel describes Joyce Chen's position as "(Domestic) Market Research Analyst." Further, as the level of the petitioner's personnel is primarily executive or managerial, and none of the personnel hold the title of "salesperson" or an equivalent thereof, it is not clear who is performing the actual sales of the petitioner's products. The record contains no explanation for these inconsistencies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, although information on the petition reflects that the petitioner has "7+" employees and a gross annual income of over \$6 million, the petition contains no evidence in support of these claims, such as quarterly wage reports and federal income tax returns. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. In view of the above discussion, the exact nature of the proffered position is not clear. Further, even if the AAO were to conclude that the proffered position was that of a market research analyst, a review of the Market and Survey Researchers category in the 2006-07 *Handbook* does not indicate that a bachelor's degree in a specialty is required for a market research analyst position.¹ While the *Handbook* indicates that a degree is generally required, it indicates that a wide variety of courses will prepare a person to perform the duties of a market research analyst. The petitioner did not describe the duties requiring a master's degree in a market research analyst-related field indicated in the *Handbook*. In view of the foregoing, the

¹ A review of the website of Marketing Research Association (MRA) at <http://www.mra-net.org/edevents/cguide2.cfm#3> finds that a wide variety of degrees is acceptable for entry into the industry including liberal arts, social science, and communications.

position does not satisfy the regulatory requirement for eligibility as a specialty occupation under the first criterion.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for market research analyst positions. There is no evidence, however, to show that the employers issuing those postings, which include manufacturing businesses, are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements are not probative.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states: “One hundred percent of their previous marketing or marketing-related positions have had a bachelor's degree or higher.” Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

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.