

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D-2

FILE: WAC 04 011 53409 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 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.

A handwritten signature in blue ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 petition will be approved.

The petitioner is an art wholesaler that 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 basis of his determination that the petitioner had failed to establish (1) that the proposed position qualifies for classification as a specialty occupation and (2) that the beneficiary is qualified to perform the duties of a specialty occupation. In denying the petition, the director found the duties of the proposed position similar to those of advertising, marketing, promotions, public relations, and sales managers.

The record of proceeding before the AAO contains (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proposed position.

According to the petitioner’s October 2, 2003 letter of support, the beneficiary would spend ten percent of his time evaluating requirements, twenty percent of his time gathering information, thirty percent of his time preparing plans for marketing, and forty percent of his time implementing marketing strategies.¹ In her November 3, 2003 response to the director’s request for evidence, counsel provided additional job duties, which would include collecting and analyzing data on customer demographics, preferences, needs, and buying habits in order to identify potential markets and factors affecting product demand; conducting research on consumer opinions and marketing strategies, collaborating with marketing professionals, statisticians, pollsters, and other professionals; developing and implementing procedures for identifying advertising needs; devising and evaluating methods and procedures for collecting data (such as surveys, opinion polls, or questionnaires), or arranging to obtain existing data; forecasting and tracking marketing and sales trends and analyzing collected data; gathering data on competitors and analyzing their prices, sales, and methods of marketing and distribution; measuring and assessing customer and employee satisfaction; measuring the effectiveness of marketing, advertising, and communications programs and strategies; monitoring industry statistics and following trends in trade literature; and preparing reports of findings, illustrating data graphically, and translating complex findings into written text.

In determining whether a proposed 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 baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor’s (*DOL*) *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

On appeal, counsel contends that the duties of the proposed position are analogous to those of market research analysts.

In reaching its own conclusions regarding the nature of the proposed position, the AAO has reviewed the discussion of market or marketing research analysts at page 175 of the 2006-2007 edition of the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*). It has taken particular note of the following section of that discussion:

[M]arket research analysts devise methods and procedures for obtaining the data they need. They often design telephone, mail, or Internet surveys to assess consumer

¹ The petitioner noted that the percentage of time to be spent performing each duty would vary, depending upon the project on which he would work.

preferences. Some surveys are conducted as personal interviews by going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers, under the market research analyst's direction, usually conduct the surveys.

After compiling the data, market research analysts evaluate them and make recommendations to their client or employer based upon 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 may also 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.

The AAO finds that it is market research analysts' work in the design and analysis of original market research that sets this occupation apart from what might otherwise be characterized as marketing or sales manager positions, employment that also requires the incumbents to perform marketing research as they seek to identify and expand business opportunities for their employers.

The AAO concludes that the record of proceeding establishes that such functions are in fact encompassed within the duties proposed by the petitioner.

The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO finds that, in this particular record of proceeding, such a demonstration has been made.

According to an evaluation contained in the record, the beneficiary possesses the equivalent of a bachelor's degree in business administration with a major in marketing. He therefore qualifies to perform the duties of this specialty occupation.

The petitioner has established that the proposed position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained and the petition approved.

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.