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U.S. Citizenship  
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Services

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NOV 07 2006

FILE: LIN 04 260 50953 Office: NEBRASKA SERVICE CENTER Date:

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 director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded to the director for the entry of a new decision.

The petitioner repairs and rebuilds electric motors and forklifts. It seeks to employ the beneficiary as a marketing research 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 finding that the proposed position is not a specialty occupation. The petitioner submitted a timely appeal.

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) 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.

The petitioner is seeking the beneficiary's services as a marketing research 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 the following:

- Conduct research on market conditions in local, national, and international regions for the forklifts to assess potential markets and future trends.
- Analyze domestic and international data regarding consumer purchasing patterns, including potential and probable sales, evaluation of equipment for marketing, projection of product life cycle, and testing to determine who is buying similar products and potential as future purchasers.
- Develop in-house reports on the market, competitive products, industry research, and domestic and international sales forecasts.
- Research the domestic and international demand for forklifts and market characteristics for new products.
- Collect and analyze population data and other statistical information to evaluate international interest in forklifts.
- Analyze prices, sales, and methods to market forklifts and other items.
- Establish research methodology and the design format for gathering data, such as surveys, opinion polls, or questionnaires.
- Liaise with clients, customers, and dealers regarding their needs.
- Compose domestic and international advertising and direct mail campaigns.
- Prepare reports using numerical data. **Develop and coordinate the use of the market research computer database and produce reports about the industry and research findings.**
- Design market research customer surveys and other customer contact research programs and direct their implementation.
- Follow-up with dealers and clients. Research methods to increase this market.
- Create and develop a website and catalogue for the forklifts department.

The petitioner requires at least five years of experience conducting customer research nationally and internationally, and a bachelor's degree in marketing, business administration, human factors, or a related field for the proposed position.

In the denial letter, the director found that many of the proposed duties reflect those of a market research analyst as described in the 2004-2005 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). However, the director was not persuaded to classify the proposed position as a specialty occupation in light of the petitioner's size, structure, and business-focus. The director stated that the petitioner's seven employees are engaged in the sales and service of electrical lift truck motors and field coil rewind and none of them are marketing personnel. The director found that the submitted evidence did not establish that the research projects and survey plans proposed for the petitioner's goal to move into

international markets would provide adequate job functions directly analogous to those of a market research analyst as depicted in the *Handbook*. The director found the submitted letters from [REDACTED], adjunct professor of marketing and management at Tacoma Community College, and [REDACTED] president of EIMS, Inc., unpersuasive in establishing that the petitioner's degree requirement is common to the industry for parallel positions among similar organizations to the petitioner. The director stated that the petitioner failed to establish that the offered position has sufficient full-time duties at the H-1B level.

On appeal, the petitioner states that it recently moved to a new facility that it built to implement its plan to grow internationally and expand domestically. The petitioner submits invoices and a bank transfer to show that it has increased its clients and sales internationally. The petitioner discusses its business cycle and the demand for its products. According to the petitioner, each of its employees holds a bachelor's degree/diploma, and/or extensive work experience, and at least 15 years of knowledge in the field. The petitioner states that the beneficiary's findings and research will assist in determining its future hiring needs. The petitioner maintains that the submitted letters from [REDACTED] and [REDACTED] establish the proposed position as a specialty occupation.

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.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Based on the job description and the supporting evidence in the record, including federal tax records that reflect growth, invoices, and other documentation, the AAO finds that the proposed duties are specialized and complex and would require the knowledge associated with the attainment of a baccalaureate or higher degree in marketing or a related field. Accordingly, the petitioner establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The AAO will now consider whether the beneficiary is qualified to perform the duties of the proposed position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The proposed position is a combination of marketing and marketing research. The *Handbook* indicates that a broad spectrum of baccalaureate degrees will prepare a worker for entry into either field. The record reflects that the beneficiary holds a bachelor's degree in recreation and leisure/business option and tourism option from the University of Waterloo, Canada. The evidence of record shows that the beneficiary does not hold a U.S. baccalaureate or higher degree or a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree from an accredited college or university. The offered position does not require state license, registration, or certification. As such, the evidence fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(1), (2), and (3).

The AAO will therefore determine whether the petitioner establishes the beneficiary's qualifications under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a U.S. baccalaureate or higher degree is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

No evidence in the record establishes the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2) or (4).

To establish the beneficiary's pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) the record contains an educational evaluation from ██████████ of Morningside Evaluations and Consulting. With respect to the beneficiary's education at the University of Waterloo, the Morningside Evaluations and Consulting evaluation states that the beneficiary "satisfied requirements substantially similar to those required toward the completion of academic studies leading to a [b]achelor's degree from an accredited institution of higher education in the United States." The evaluation does not establish that the beneficiary has the educational equivalent of a baccalaureate degree in the United States from an accredited institution. The evaluation further states that the beneficiary's academic coursework, and more than seven years of work experience and training in marketing and related areas, are the equivalent of a bachelor of arts in marketing from an accredited institution of higher education in the United States. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) indicates that the educational evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials entails an evaluation of the beneficiary's education; work experience is not to be considered by the credentials evaluation service in the educational evaluation. As the educational evaluation by Morningside Evaluations and Consulting, a credentials evaluation service specializing in evaluating foreign educational credentials, is based on an evaluation of the beneficiary's academic coursework, work experience, and training, the educational evaluation fails to establish the beneficiary's qualifications for the proposed position under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

The AAO will now consider the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3)

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Upon a review of the record, the combination of the beneficiary's education, work experience, and training is insufficient to establish the equivalent of a bachelor's degree in a field relating to the proposed position. The Morningside Evaluation does not state how many credit hours of equivalent education the beneficiary has.

The record contains a January 15, 2003 memorandum from the beneficiary to [REDACTED] the memorandum describes the beneficiary's duties and responsibilities while employed with Lawrence Tours and Travel Company Ltd. in Jerusalem. This memorandum is not persuasive in establishing the beneficiary's duties with Lawrence Tours and Travel Company Ltd.: it is not written by an authorized representative of Lawrence Tours and Travel Company Ltd. Consequently, the letter does not establish that the beneficiary's training and/or work experience included theoretical and practical application of specialized knowledge required by the specialty occupation and that her experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

The AAO notes that no evidence establishes that the beneficiary has recognition of expertise in the specialty. The record does not contain evidence establishing that [REDACTED] is a recognized authority in marketing or a related field.

The evidence in the record is insufficient to establish that the beneficiary is qualified to perform the duties of the proposed position. Thus, the petition may not be approved at this time. The petition will be remanded in order for the director to determine whether the beneficiary is qualified to perform the services of a specialty occupation. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of the beneficiary's qualifications to perform the proposed duties, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

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how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

**ORDER:** The director's June 14, 2005 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.