

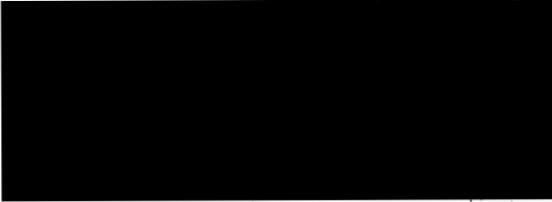
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U.S. Citizenship
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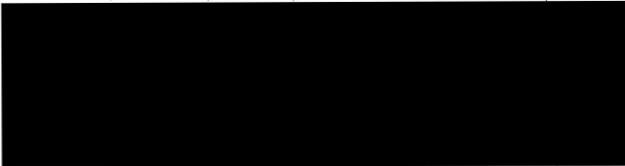


FILE: WAC 04 027 53284 Office: CALIFORNIA SERVICE CENTER Date: OCT 06 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

for Michael T. Kelly
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be granted. The previous decision shall be withdrawn. The petition will be approved.

The petitioner is a real estate development and construction firm, with 12 employees and gross annual income in excess of \$5 million. It seeks to hire the beneficiary as a market analyst 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 based on his determination that the petitioner had failed to establish that the proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B appealing the director's decision, with counsel's brief; (6) the AAO's dismissal of the appeal; and (7) counsel's motion to reopen, submitting additional evidence. The AAO reviewed the record in its entirety before reaching its decision.

Pursuant to 8 C.F.R. § 103.5(a)(2), counsel's motion is accompanied by new evidence that addresses the AAO's finding that the petitioner's tax returns showed no payment of wages and salaries, an inconsistency that undermined the reliability and sufficiency of the petitioner's remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The documentation submitted by counsel resolves this issue.

Accordingly, the AAO now turns to counsel's assertion that, as the petitioner has established its payment of wages and salaries, the record now demonstrates that the proffered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

The initial issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, 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 the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary's services as a market analyst. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's October 23, 2003 letter in support of the petition and its January 28, 2004 response to the director's request for evidence. This evidence indicates that the petitioner requires the beneficiary's services to explore the potential for expanding its construction business. Based on the petitioner's statements, the responsibilities of the proffered position would require the beneficiary to:

- Provide detailed marketing studies focusing on such areas as competitor analysis (including the economic and financial status of the company, areas of concentration and the statistical likelihood of securing certain types of bids based on present-day market conditions), various types of demographic studies (i.e., reports concerning the different types of construction being carried out in certain specific types of areas, present market conditions for different types of construction, various rules and

regulations affecting construction within a given location, zoning ordinances affecting different types of construction being carried out, etc.), the overall type of construction that should be concentrated on to provide the highest level of profitability given financial resources, and other related market studies that will assist the company in deciding whether or not to expand;

- Prepare a series of surveys, questionnaires and other related data in order to ascertain client satisfaction and price competitiveness; and
- Compile extensive statistical and demographic analyses and reports concerning the advisability and viability of opening satellite offices in additional cities in California.

The petitioner states that the performance of the above duties requires a strong academic background, like that held by the beneficiary who has a bachelor's degree in psychology.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) – a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree and whether the industry's professional association has made a degree a minimum entry requirement.

While the AAO previously found that the record did not support the petitioner's description of the proffered position as that of a market analyst, it now agrees that the position's duties reflect the employment of market research analysts. As discussed by the 2006-2007 edition of the *Handbook*, market and survey researchers, also referred to as market or marketing research analysts, are:

[c]oncerned 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 data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need

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 regard to the academic preparation required for employment as a market research analyst, the *Handbook* indicates:

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

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful¹

Although the *Handbook* indicates that employers seeking market research analysts require job candidates to hold the minimum of a baccalaureate degree, it does not report that the degree held must be in a field directly related to market research, as required for classification as a specialty occupation. When a job, like that of market research analyst may be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Accordingly, the proffered position is not established as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Neither does the AAO find the record to support sufficient evidence to demonstrate that the petitioner's degree requirement is the norm within its industry or that the proffered position may be distinguished from similar, but non-degreed employment based on its complexity or unique nature, as required to establish the proffered position as a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, the position is so complex or unique that it can be performed only by an individual with a degree. The AAO also concludes that, as the petitioner has not previously employed a market research analyst, it has no hiring history regarding the proffered position that would satisfy the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. Accordingly, the petitioner has not satisfied any of the first three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

However, the AAO does find the petitioner to have established that the proposed duties of the proffered position, when considered in concert with its business operations, are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in an academic field requiring training in the principles of quantitative research. Therefore, the petitioner has satisfied the criterion

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos013.htm. Prior to its 2006-2007 edition, the *Handbook* reported that individuals seeking employment as market research analysts generally required a degree at the master's level in business administration, marketing, statistics, communications, or some closely related discipline. Accordingly, the AAO's August 9, 2005 dismissal of the petitioner's appeal, which relied on the 2004-2005 edition of the *Handbook*, indicated that the occupation imposed a master's degree requirement. The California Service Center's February 8, 2001 approval of a market research analyst was based on an even earlier discussion of market research analysts in the *Handbook*.

of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) and the AAO withdraws the director's determination that the proffered position is not a specialty occupation.

The AAO now turns to a consideration of whether the evidence of record establishes the beneficiary as qualified to perform the duties of a specialty occupation. In determining whether an alien is qualified to perform a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) – full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or 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.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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.

To establish the beneficiary's academic qualifications to perform the duties of the proffered position, the petitioner has submitted a copy of the beneficiary's 1988 baccalaureate degree from the Colegio de San Juan de Letran in The Philippines, her academic transcripts from that institution indicating that her baccalaureate degree was granted in psychology and an evaluation of her academic background from International Credential Evaluators (ICE), Inc. in Norman, Oklahoma, which concludes that she holds the equivalent of a U.S. baccalaureate degree in psychology from an accredited university in the United States.

Based on its review of the record, the AAO agrees that the petitioner has demonstrated that the beneficiary holds the equivalent of a U.S. baccalaureate degree in psychology. Further, it finds the *Handbook* to indicate that a baccalaureate degree in psychology prepares an individual for entry-level employment in marketing research. [*Handbook* at page 179]. Accordingly, the beneficiary's degree equivalency in psychology is found to satisfy the requirements of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) – a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation.

For reasons previously discussed, the AAO's prior decision will be withdrawn and the petition will be 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 met that burden.

ORDER: The decision of the AAO is withdrawn. The petition is approved.