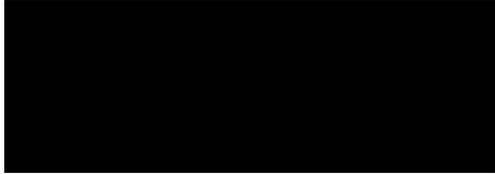


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U.S. Citizenship
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Services

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FILE: LIN 04 251 51169 Office: NEBRASKA SERVICE CENTER Date: **SEP 07 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:

SELF-REPRESENTED

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 cursive script, appearing to read "Robert P. Wiemann".

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 sustained. The petition will be approved.

The petitioner is a wholesaler/retailer of café products and equipment that seeks to employ the beneficiary as an operations research analyst. The petitioner 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 grounds that the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief.

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; (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 an operations research analyst. Evidence of the beneficiary's duties includes the I-129 petition 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:

- Implementation and administration of a large database for the analysis of information on product purchases by customers and sales of the products of competing companies, in order to identify buying patterns and specific trends among customers and potential customers in targeted markets.
- Collection, integration, and analysis of sales and marketing-related data gathered from various sources on the general business environment, the restaurant, food, and catering industries, developments within different product categories, and potential customers in different regions of the United States and internationally to forecast trends which affect demand for the petitioner's products and may require changes in the petitioner's direct and indirect marketing strategies or the development of new strategies for a specific customer, industry, or region.
- Preparing reports based on research and data analysis for use by the petitioner's sales manager and sales representatives in identifying the markets to focus on and the development of effective sales and marketing campaigns and strategies for the direct marketing of specific products and product lines to existing customers or potential customers based on geography, purchasing power, and other factors.
- Evaluation of the effectiveness of the company's current marketing strategies and proposed marketing strategies, including evaluating and overseeing, on an ongoing basis, the operations of the petitioner's e-commerce website as a critical new strategy for increasing sales of the company's products to customers in different regions of the country.
- Analysis of pricing and demand for specific products.

- Analysis and evaluation of procedures for optimizing warehouse operations and products distribution to handle the increased sales volumes that are anticipated, once the petitioner's e-commerce website is fully implemented in the next several months. These services will include modification of existing storage, order fulfillment, and shipping procedures and the implementation of advanced bar coding and scanning technologies to improve efficiency. Identification of new locations to place warehouses and distribution points through analysis of data relating to customer orders and the market for the company's products in different regions.
- Identifying problems in supply chain management to ensure the availability for fast delivery of products to customers, while reducing inventory levels, limiting the number of multiple orders that must be placed with suppliers, and decreasing storage and transportation costs.
- Participation in meetings with the sales manager and other officers of the petitioner to discuss strategic planning issues relating to increasing sales of the petitioner's espresso equipment and café products, and the effect of market trends and changes in product demand on the marketing strategies currently being implemented or under construction by the company.
- Analysis of the business needs and preferences of customers to identify additional products that customers may be interested in purchasing from the petitioner.

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.

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 director found that the proffered position was not a specialty occupation because the Department of Labor’s *Occupational Outlook Handbook (Handbook)* does not indicate that businesses such as the petitioner employ operations research analysts. The director found that the proffered position would not involve “the complex or advanced duties normally associated with operations research in the fields of national defense, architectural services, engineering services, computer systems design or scientific research.” Finally, the director found that the petitioner failed to submit evidence to establish any of the other criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that contrary to the director’s assertions, the *Handbook* indicates that operations research analysts are employed by organizations of all sizes and in almost every industry. Counsel asserts that, in spite of its relatively small size, the petitioner requires the services of a operations research analyst because of its “plans to expand sales of its products to new markets in the United States, internationally, and through its new e-commerce web site.”

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): whether 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 the 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)*, 2006-2007 edition, 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)).

Even though the petitioner lists operations research analyst as the title of the proffered position, the record shows that the duties of the position more closely resemble those of a market research analyst. The *Handbook* states that the primary function of operations research analysts is to determine better ways to effectively coordinate the use of money, materials, equipment and people in complex organizations by applying analytical methods from mathematics, science, and engineering. Consequently, employers generally prefer applicants for these positions with at least a master's degree in operations research or a closely related field, such as computer science, engineering, business, mathematics, information systems, or management science, coupled with a bachelor's degree in computer science or a quantitative discipline such as economics, mathematics, or statistics. Market research analysts, on the other hand, 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, market research analysts analyze data on past sales to predict future sales.

The petitioner's description of the work the beneficiary will perform indicates that the petitioner is seeking to employ the beneficiary primarily as a market research analyst. In its response to the director's request for further evidence, the petitioner states that the beneficiary "will specifically focus on the analysis of sales and marketing data collected from various sources." While some of the duties the petitioner lists are typically performed by operations research analysts, the record indicates that the beneficiary's primary responsibilities will involve market research. The *Handbook* indicates that market research analysts are regularly employed by "commercial equipment and supplies merchant wholesalers" such as the petitioner. The petitioner's business operations do not exhibit the complexity associated with businesses that typically employ full-time operations research analysts, and the record suggests that the beneficiary will only assist the petitioner's industrial engineer/operations manager in performing duties normally associated with an operations research analyst position.

The *Handbook* indicates that a bachelor's degree, and often a master's degree, is the minimum educational requirement for many market research jobs. The *Handbook* does not state that a bachelor's degree in a specific specialty is required for market research analyst positions, but indicates that such positions are filled by individuals with bachelor's degrees who have completed college coursework in business, marketing, consumer behavior, and prospective markets, and that candidates who also possess the quantitative skills learned through college courses in mathematics, statistics, sampling theory and survey design, and computer science are preferred. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has established, however, 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. As noted in the *Handbook*, a bachelor's degree is a prerequisite for many market research analyst positions. The duties of the proffered position are specialized and complex in nature and are normally performed by individuals who have obtained a baccalaureate level education, or its equivalent, in such specialties as business administration and marketing combined with coursework in mathematics, statistics, computer science or other quantitative fields. Indeed, the duties of the proffered position require the theoretical and practical application of a body of highly specialized knowledge often associated with an advanced degree. The petitioner has, therefore, satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The proffered position is a specialty occupation.

The director did not make a determination as to the beneficiary's qualifications to perform the duties of the proffered position. The record is sufficient, however, for the AAO to make this determination.

To prove that a beneficiary is qualified to perform the duties of a specialty occupation, a petitioner must 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.

At the time of filing, the petitioner submitted evidence showing that the beneficiary possesses a Master of Business Administration from an accredited university in the United States. The petitioner also submitted an evaluation from [REDACTED] indicating that the beneficiary holds a foreign degree that is the equivalent of a U.S. bachelor's degree in accounting. Thus, the beneficiary is qualified to perform the duties of the specialty occupation.

CIS records reflect that the beneficiary may be in violation of the National Security Entry – Exit Registration System (NSEERS) and may thus be ineligible for change of status. This issue is not before the AAO.

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 and the petition shall accordingly be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.