



U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 092 51811 **Office:** CALIFORNIA SERVICE CENTER **Date:** AUG 16 2007

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 appeal will be sustained. The petition will be approved.

The petitioner is a health and beauty products wholesaler. It seeks to employ the beneficiary as an international market analyst. The petitioner, therefore, endeavors to extend the beneficiary's classification 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 finding that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. The director also noted that the petitioner failed to provide all the evidence requested by the director in the request for additional evidence.

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.

The petitioner is a U.S. subsidiary of a Japanese firm with 847 employees worldwide and global sales of \$376 million in 2004.¹ The Japanese parent company manufactures health supplements and hair color products. It established the petitioner in 2003 to market and sell products in the United States that it manufactures abroad.

The aim of the petitioner in creating the position of international market analyst is to investigate and identify opportunities for growth in the U.S. market for products manufactured by the petitioner's Japanese parent. In its April 5, 2006 response to the director's request for additional evidence, the petitioner stated that the duties of the proposed position would include the following:

1. Analyze and evaluate international market trends and related data on health and beauty aid products (25% of all duties, approximately 20 hours per week at manager level)
2. Create concepts of company products including health and beauty aid products ("HOYU Products") based on the evaluation made by 1 above (10% of all duties, approximately 4 hours per week at manager level)
3. Analyze marketing and sales data as well as sales costs for HOYU Products to plan effective international market strategies (10% of all duties, approximately 4 hours per week at manager level)
4. Evaluate international economic currents and create economic forecast (10% of all duties, approximately 4 hours per week at manager level)
5. Research and analyze the US local market as well as the consumer group's demographic data and economic conditions (10% of all duties, approximately 4 hours per week at manager level)

¹ Although these figures have not been verified, they are consistent with other information contained in the record.

6. Collect and analyze competitor's data on marketing and sales in the US (10% of all duties, approximately 4 hours per week at manager level)
7. Plan strategic distribution of HOYU Products in the US (25% of all duties, approximately 10 hours per week at manager level)

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. The basis of the director's denial on this ground was two-fold: first, he found that the duties of the proposed position were not those of a market research analyst but were in fact actually those of a marketing manager as set forth in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). Second, the director found that the petitioner lacked the "organizational complexity" to credibly offer a full-time position as a marketing manager.²

The AAO will first address the director's characterization of the proposed duties as those typically performed by marketing managers, positions that typically do not qualify for classification as specialty occupations. The AAO acknowledges that one of the proposed duties, such as the duty to create concepts of company products including health and beauty aid products based on the evaluation made by the supervisor, are typically performed by marketing managers. However, the AAO notes that the purpose of the petitioner's Japanese parent in establishing the petitioner was to prepare and develop a market for its products, and finds that the petitioner intends to employ the beneficiary as a market research analyst. Moreover, the AAO notes that the petitioner has provided the name of its marketing manager. While the duties for the proposed position are not precisely the same duties performed by a market research analyst as those described in the *Handbook*, they are substantially similar and the AAO finds that most of the proposed duties are analogous to those of market research analysts as described in the *Handbook*.

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 *Handbook* for its information about the duties and educational requirements of particular occupations.

The duties of the proposed position are similar to the duties for the position of market research analyst as outlined in the *Handbook*. The *Handbook* states that market research analysts are responsible for "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;" which is similar to the proposed duties where the beneficiary will "analyze and evaluate international market trends and related data on health and beauty aid products"; "evaluate international economic currents and create economic forecast"; and "collect and analyze competitors' data on marketing and sales in the US." The *Handbook* further states that market research analysts "devise methods and procedures for obtaining the data they need" and

² In arriving at this conclusion, the director noted the petitioner's small size and its lack of a demonstrated marketing team, and an international, national, regional or local advertising or sales campaign developed by the petitioner.

“after compiling and evaluating the data, market research analysts make recommendations to their client or employer on the basis of their findings.” These duties are similar to the petitioner’s proposed duties in that the beneficiary will “analyze marketing and sales data as well as sales costs for the Company Products to plan effective international market strategies”; and “plan strategic distribution of the Company Products in the US.” In reviewing the 2006-2007 edition of the *Handbook*, the AAO finds that the duties and responsibilities of the proposed position are encompassed within the *Handbook’s* entry for market research analysts.

The AAO disagrees with the director that the petitioner lacks the “organizational complexity” to offer a full-time position as a market research analyst. Although the petitioner currently employs only eight individuals, this focus ignores the scale and scope of the Japanese parent’s organization. The petitioner was established as a wholly owned subsidiary of the Japanese parent, and the sole reason for its creation was to prepare and develop a market in the United States for its parent company.

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 petitioner has submitted a detailed description of the duties of the proposed position, that, in combination with this particular record’s information about the petitioner’s business, establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The AAO notes that the beneficiary possesses a master’s degree in business administration from Indiana University located in Bloomington, Indiana, so he is qualified to perform the duties of this specialty occupation.

The petitioner has established both that the position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of that specialty occupation. As such, 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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.