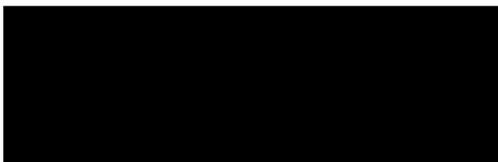




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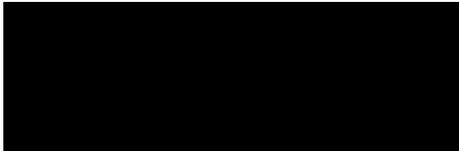
FILE: EAC 06 025 52564 Office: VERMONT SERVICE CENTER Date: AUG 24 2007

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 service center director 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 The director's decision will be withdrawn.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 entry of a new decision.

The petitioner is a computer hardware wholesaler. It seeks to employ the beneficiary as a market research analyst and endeavors to classify her 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

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 are 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 with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a market research analyst. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Research market conditions on computer hardware products at local, national, and international levels through the Internet, trade publications, trade fairs and shows;
- Examine and analyze statistical data to evaluate and predict future marketing trends for company products and prepare marketing reports to pinpoint the overall business development direction for the company;
- Design formats for data collection;
- Gather data on competitors and analyze prices, sales and methods of marketing;
- Gather product ideas from multiple sources;
- Coordinate distribution activities in the company with sales, record control and purchasing departments to ensure product availability for customers;
- Analyze and review daily sales reports, business plans and report for further business decisions and business development;
- Provide business forecast analysis and investment suggestions based on sales and revenue;
- Coordinate business growth and marketing development;
- Negotiate contracts with current and prospective suppliers;

- Recommend product development strategies to create competitive advantage based on feedback from clients;
- Establish operational procedures and strategies; and
- Investigate and develop domestic public relations, customer satisfaction, and good trade relations with suppliers from China, Taiwan, and other Asian countries.

The petitioner requires a minimum of a bachelor's degree in business administration or closely related fields for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. Though varied, the duties of the proffered position appear to be those noted for market and survey researchers. The *Handbook* notes that market research analysts 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, they analyze data on past sales to predict future sales. They devise methods and procedures for obtaining the data they need. Like market research analysts, survey researchers design and conduct surveys for a variety of clients, such as corporations, government agencies, political candidates, and providers of various services. The surveys collect information that is used for performing research, making fiscal or policy decisions, or improving customer satisfaction. They may also conduct opinion research to determine public attitudes on various issues. The *Handbook* notes that a bachelor's degree is the minimum educational requirement for many market and survey research jobs. 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 helpful. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record does, however, establish that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner's business is in a highly competitive field in a mature industry. In an effort to diversify and create new business opportunities, the petitioner is developing an Asian market for used computer hardware and associated products. A business plan was submitted into the record in support of this assertion along with other evidence of the petitioner's business ventures in this area. The petitioner submitted an opinion letter from [REDACTED] a business consultant and the principal of Kinship Business Associates. [REDACTED] noted that the petitioner's sales had stagnated in its market and that the petitioner was facing increasing competition from large national companies. In an effort to increase its business, or even to survive, the petitioner is establishing new business initiatives with exports to China. In order to succeed in this new line of commerce, [REDACTED] states that it is imperative for the petitioner to employ the services of a market research analyst. The duties to be performed by the beneficiary include substantial market research in mainland China to determine areas of business potential. In this regard, the beneficiary will be required to: gather and analyze statistical data to predict marketing trends for company products; prepare marketing reports for business development which will be relied on by management in making strategic business decisions; design formats for data collection; analyze competitors marketing and sales potential; locate suppliers for goods and negotiate sales contracts with domestic and

international customers; and recommend product development strategies. These duties, as presented in the present petition, and considering the petitioner's present business environment and goals for its business, are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), and the offered position qualifies as a specialty occupation.

The petition may not be approved, however, because it cannot be determined from the record that the beneficiary qualifies to perform the duties of a specialty occupation. The petitioner submitted an experiential evaluation from [REDACTED] an associate professor of marketing and the Chair of the Department of Marketing at Seton Hall University, who determined that the beneficiary's prior education and work experience are equivalent of a bachelor of business administration degree with a concentration in management and marketing from an accredited institution of higher education in the United States. An evaluation of past work experience for educational equivalence purposes may only be made by an individual 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). In [REDACTED] evaluation, he asserts that he possesses the requisite authority, and that Seton Hall university has a program for granting college level credit based on an individual's foreign education, training, and/or employment experience. [REDACTED] unsupported statement in this regard, however, is insufficient to establish his assertion. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). The record must contain a statement from an official of Seton Hall university who has authority to confirm that the university has a program for granting academic credit based upon past work experience, and that [REDACTED] has authority to evaluate past work experience and grant academic credit based on qualifying experience. As such, this matter must be remanded to the director to determine whether the beneficiary is qualified to perform the duties of the proffered position. The director may request such additional evidence as she deems necessary in rendering her decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion which, if adverse to the petitioner, shall be certified to the AAO for further review.