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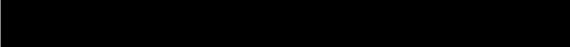
U.S. Citizenship  
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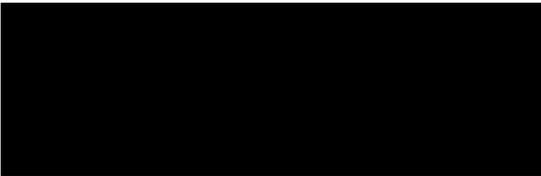
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FILE: EAC 06 136 50295 Office: VERMONT SERVICE CENTER Date: **DEC 20 2007**

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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner sells, exports, and repairs electronic equipment for aircrafts. It seeks to employ the beneficiary as a Latin America market research analyst. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 record of proceeding includes: (1) the Form I-129 filed April 3, 2006 and supporting documents; (2) the director's April 13, 2006 request for further evidence (RFE); (3) counsel's July 3, 2006 response to the RFE and supporting documentation; (4) the director's July 19, 2006 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before rendering its decision.

On July 19, 2006 the director denied the petition determining that the petitioner had not provided evidence establishing that the proffered position was a market research analyst position. On appeal, counsel for the petitioner submits a brief.

The issue before the AAO is whether the petitioner has established that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

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 (5<sup>th</sup> 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 recited the duties of the position in a March 14, 2004 letter appended to the Form I-129 as:

In this position, [the beneficiary] will research the market conditions to determine potential sales for the company's services. She will direct the research of economic trends and marketing conditions in local, regional and international areas. [The beneficiary's] main goals will be to determine potential sales of the company's services, increase the current customer base, and establish short/long term marketing decisions. She will also direct the research team that will gather data on the market pricing and services. She will direct the research department staff training and evaluate their performance. She will analyze the current market statistics to formulate policies for new sales and marketing strategies, and she will review market analyses to determine customer needs, volume potentials, and price schedules.

In a July 3, 2006 response to the director's RFE, counsel for the petitioner asserted that the proffered position of Latin America Market Research Analyst qualifies as a specialty occupation. Counsel referenced the Department of Labor's *Occupational Outlook Handbook (Handbook)* and the Department of Labor's

*Dictionary of Occupational Titles (DOT)* in support of her assertion. Counsel asserted that the petitioner had previously employed an individual in H-1B classification "under the position of Market Research Analyst" and that the individual continued to be employed by the company as part of its marketing team. The petitioner provided copies of this individual's diploma, transcripts, and evaluation to support this assertion. Counsel also cited several unpublished decisions in support of the proposition that a market research analyst position is considered an H-1B level occupation.

Counsel also submitted a position evaluation dated May 15, 2006, authored by [REDACTED] Adjunct Professor at Embry-Riddle Aeronautical University in Fort Lauderdale, Florida. Dr. [REDACTED] rephrased the petitioner's description of the beneficiary's proposed duties and opined: "in order to adequately perform the responsibilities required for the job of Latin America Market Research Analyst at [the petitioner], an individual would need the knowledge obtained by acquiring a Bachelor's Degree in Business Administration or a related subject." Dr. [REDACTED] noted that he had based his assessment on the fact that the job requires specialized knowledge to perform the petitioner's list of duties for the position and again opined that only an individual with at least a bachelor's degree in business administration or a related subject could effectively perform such complex responsibilities. Dr. [REDACTED] concluded: "based on a thorough analysis of the occupation in question, a detailed list of job responsibilities and [his] expertise in the field of higher education, that the [proffered position] would require a Bachelor's degree in Business Administration or a related subject to adequately perform the complex duties required for the position."

Counsel further provided copies of four Internet job announcements for the positions of: (1) a senior marketing analyst for a wireless company that indicated a bachelor's degree was required and a masters of business administration was a plus; (2) a project manager/marketing analyst for an international insurance and financial services organization that indicated previous marketing support experience or a masters of business administration was preferred; (3) a research and marketing analyst for an information services provider that indicated the ideal candidate would have a college degree, preferably in English or communications; and (4) an operations coordinator (marketing analyst) for a magazine subscription marketer that listed a bachelor's degree in the education heading but did not indicate if the degree was preferred or required or whether the degree should be in a specific discipline.

On July 19, 2006, the director determined that the petitioner's description of the proposed duties of the position mirrored the description of a marketing manager as discussed in the *Handbook*, a position that did not require a bachelor's degree. The director noted that the petitioner had not described a group of tasks that set the proffered position apart from a marketing manager or a market research manager. The director acknowledged the position evaluation submitted but noted that the evaluator had based his conclusions on the duties of the position without supporting his conclusions with documentary evidence. The director recognized the petitioner's claim that it had previously employed an individual as a market research analyst but found that a previously approved H-1B visa classification for one employee in the past fifteen years of the petitioner's operation, did not establish that the proffered job required a bachelor's degree related to a specific discipline.

On appeal, counsel for the petitioner asserts that the position of market research analyst is a specialty occupation and again cites unpublished decisions to substantiate that a market research analyst has been

determined to be a specialty occupation. Counsel asserts that the *Handbook* reports that a bachelor's degree is the minimum educational requirement for many market and survey research jobs and that market research analysts may earn degrees in business administration, marketing, statistics, communications, or some closely related discipline. Counsel asserts that the petitioner's prior application for an H-1B market research analyst position was approved, establishing that a market research analyst position is a specialty occupation. Counsel also references Dr. [REDACTED] position evaluation previously submitted and asserts that the evaluation establishes that the duties of the proffered position are complex. Counsel also references the previously submitted Internet job announcements and contends these job announcements show that the minimum requirement for a market research analyst position is a bachelor's degree in business or a related area. Counsel asserts the petitioner has established each of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel's assertions are not persuasive. The AAO does not disagree that a market research analyst position may be a specialty occupation. The *Handbook* states the following with regard to the employment of marketing research analysts:

Market, or marketing, 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 statistical data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need. Often, they design telephone, mail, or Internet surveys to assess consumer preferences. They conduct some surveys as personal interviews, going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys under the market research analyst's direction.

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 may also 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 also might develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

\* \* \*

Because of the applicability of market research to many industries, market research analysts are employed throughout the economy....

The *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey research jobs. However, the *Handbook* does not indicate that a degree in a specific discipline would be required for market research analyst jobs. Further, labeling a position as a market research analyst does not establish that the position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). To establish a position as a specialty occupation, the petitioner must provide a comprehensive description of the duties of the position as those duties relate specifically to the petitioner's

business operations. Providing an overview of an occupation is insufficient. In this matter, the description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention that it is offering a position that requires the theoretical and practical application of a body of highly specialized knowledge evidenced by the attainment of a bachelor's or higher degree in a specific specialty as a minimum for entry into the United States.

A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., a market research analyst analyzes market statistics to formulate policies for new sales and marketing strategies. Neither can the petitioner establish its employment as a specialty occupation by making conclusory statements regarding the position, rather than defining the activities associated with the position; for example, describing how the beneficiary assesses the market conditions for the petitioner. Going on 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 Dec. 190 (Reg. Comm. 1972)). A generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, the petitioner must describe the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business interests.

In the instant matter, the petitioner has not offered a description of the duties of its proffered position beyond a few general statements. As previously noted, CIS must examine the actual employment of an alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The petitioner's description of the duties of its position is so generic that it is not possible to identify the actual daily duties required of the position and, therefore, whether the position in this matter meets the statutory definition of a specialty occupation. It is not possible to discern whether the proffered position incorporates the duties of a market research analyst or that of a marketing manager, an occupation that is not considered a specialty occupation. As the description does not illustrate the daily duties of the position, the AAO finds that the petitioner has failed to establish that the proffered position is a specialty occupation under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching its decision, the AAO has reviewed Dr. [REDACTED] position evaluation. Dr. [REDACTED] bases his opinion on the general description of duties the petitioner provided. Dr. [REDACTED] concludes, without analysis, that the duties require a bachelor's degree in business administration "to adequately perform the complex duties required [of] the position." Dr. [REDACTED] does not note which particular duties are complex, does not indicate that he reviewed the petitioner's business operations, visited the petitioner's worksite, interviewed the petitioner's executive personnel, or otherwise understood the nature of the petitioner's business or the actual duties of the proffered position. The AAO observes that some marketing positions may require a bachelor's degree in a specific field; however, Dr. [REDACTED] does not provide sufficient details about the complexity of the duties in relation to the petitioner's business to substantiate his conclusions. There is an inadequate factual foundation established to support the opinion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information

or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The overly broad description does not establish that the actual duties of the position require a bachelor's degree in any particular field. Dr. [REDACTED] opinion is not sufficiently specific and is not supported by substantive evidence to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO has also examined the job announcements that the petitioner provided to establish that a degree requirement is the norm within the petitioner's industry. The job announcements submitted, however, do not show that the advertising businesses are similar to the petitioner in size, number of employees, or level of business, nor can the job descriptions provided by these listings be established as parallel to the nonspecific job description provided for the proffered position. Moreover, as the record does not establish the actual duties of the position as it relates to the petitioner's business, it precludes the petitioner from demonstrating that the proffered position is parallel to any degreed position within similar organizations in its industry. A review of the totality of the job announcements, the job descriptions contained therein, and the type of organizational entities advertising the positions, does not demonstrate that the proffered position is parallel to positions offered by organizations similar to the petitioner, which require a bachelor's degree in a specific specialty.

Likewise, the petitioner's assertion that it had previously employed an individual in the proffered position, who had been approved for H-1B classification, does not establish that the proffered position is a specialty occupation. This record of proceeding does not contain the supporting documentation submitted to the Vermont Service Center in that prior matter. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). In addition, the AAO finds that if the prior approval of the petitioner's position as a specialty occupation was based on the same general description of duties as provided in this matter without substantiating evidence, the prior approval would be in violation of paragraph (h) of 8 C.F.R. § 214.2, and would constitute material and gross error on the part of the director. Further, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. See *Defensor v. Meissner*, 201 F. 3d at 384. Moreover, while the petitioner indicates that it had previously employed an individual in the proffered position, the petitioner has not substantiated that it employed that individual in the proffered position for the duration of the H-1B classification. The record does not contain documentary evidence of when the individual was employed or for how long. Upon review of the record in this matter, including the petitioner's claim that it had previously employed an individual in the proffered position who had a bachelor's degree in a specific discipline, the AAO finds that the petitioner has failed to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) based on its normal hiring practices.

Without a meaningful job description, the petitioner: has not established that a baccalaureate or higher degree is normally the minimum requirement for entry into the position; has not established that the position's duties are parallel to any degreed positions within similar organizations in its industry; has not distinguished the

position as more complex or unique than similar, but non-degreed, employment; has not established that it previously employed only degreed individuals to perform the duties of the position; and has not distinguished the proffered position based on the specialized and complex nature of its duties. The petitioner has not established that the proffered position is a specialty occupation.

The AAO finds that counsel's references to unpublished decisions are not probative. Counsel has not furnished evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. As observed above, the AAO acknowledges that a market research analyst position, if properly detailed and supported by documentary evidence, may comprise a specialty occupation. In this matter, the petitioner has failed to provide sufficient evidence to establish that its position is that of a market research analyst. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Upon review of the totality of the evidence submitted in support of the petition, the petitioner failed to establish that the proffered position is a specialty occupation.

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 not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.