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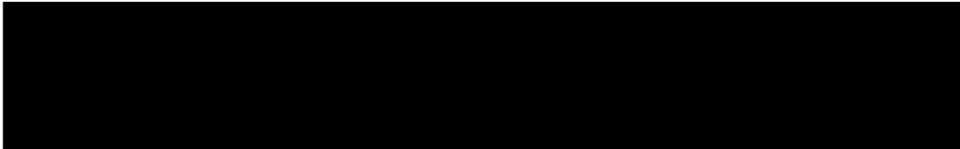
FILE: WAC 04 132 53619 Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2007

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

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 dismissed. The petition will be denied.

The petitioner engages in the export of goods and merchandise to Saipan. It seeks to employ the beneficiary as a market research analyst and endeavors to classify him 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 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:

- Determine research methodology and formulate quantitative procedures for collecting information, conducting surveys, and compiling data;
- Gather data and collect information on competitors in the clothing, toys and related businesses in Saipan;
- Analyze competitor’s prices, costs, sales, and marketing methods for clothing and toys in Saipan;
- Identify the specific styles, brands, fabrics, and colors of clothing and the types and models of toys that are in demand in Saipan;
- Recommend specific products to be promoted and the exact regions in which the products should be marketed, and certain products that should be dropped from the company’s product line;
- Tabulate survey results and use findings to recommend pricing strategy, marketing methods, product promotion and distribution for clothing and toys based on consumer preferences and purchasing habits; and
- Prepare comprehensive reports listing research results and illustrating data graphically for company use for financial planning and formulating business strategy.

The petitioner requires a minimum of a bachelor’s degree in economics, international business, or business administration for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish 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. 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 conduct opinion research to determine public attitudes on various issues; the research results may help political or business leaders and others assess public support for electoral prospects or social policies. 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)(1).

The petitioner asserts that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. In support of that assertion, the petitioner submitted an opinion letter from [REDACTED], a marketing professor at Seattle University. [REDACTED] opinion states that the proffered position qualifies as a specialty occupation because of the breadth of responsibility the position entails. [REDACTED] bases his opinion on his personal experience, and references marketing literature he has reviewed. The opinion does not, however, conclude that the position requires a degree in a specific specialty. [REDACTED] states that the position requires a bachelor's degree. Neither [REDACTED] nor the *Handbook* state that a degree in a specific specialty is required to perform the duties. [REDACTED] further states that he has encountered many firms that employ a marketing analyst, and that he has had many occasions to search the AMA Job Bank for "marketing research analyst" positions and that nearly all require a bachelor's degree in business or a related field. [REDACTED] did not, however, provide copies of any job advertisements to substantiate his claim or other documentation that would establish a degree requirement in a specific specialty for the position on an industry wide basis. His opinion, therefore, is of little evidentiary value. 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)). CIS 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, CIS 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 petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree or its equivalent for the offered position as the petitioner is a new company with no previous employment history for the position. As such, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner has not established that the nature of the offered position's specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor has it established that the duties of the offered position are so

complex or unique that they can only be performed by an individual with a degree in a specific specialty. The AAO notes the petitioner submits copies of materials describing various products and identical letters from 12 sellers indicating that the petitioner has helped to increase sales volume and add to their revenues. This evidence does not establish that market research performed to sell these products requires a degree in a related field of study. The duties of the offered position are routine in the industry for market and survey researchers. Those duties are normally performed by individuals with degrees in a variety of educational disciplines. The petitioner has failed to satisfy the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Finally, the petitioner makes reference to the Department of Labor's *Dictionary of Occupational Titles* SVP rating and the Occupational Information Network (O*Net) job classification for the proffered position to establish a degree requirement for the position. The petitioner's assertions in this regard are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

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