



U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 248 52057 Office: CALIFORNIA SERVICE CENTER Date: JAN 29 2007

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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 California Service Center 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, a distributor of power supply integrated circuits, seeks to hire the beneficiary as a marketing research analyst. The director found that the petitioner had failed to establish the proffered position was a specialty occupation. The petition was denied accordingly.

The petitioner asserts, through counsel, that it aggressively pursues markets for its products throughout the world; that it needs a marketing research analyst; and that the beneficiary's duties as a marketing research analyst relate to the expansion of the petitioner's international marketing efforts.

The record of proceeding before the AAO contains: (1) Form I-129, Petition for a Nonimmigrant Worker (Form I-129) and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's RFE; (4) the director's denial letter; and (5) Form I-290B, Notice of Appeal to the Administrative Appeals Unit, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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.

U.S. 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 states that it seeks the beneficiary's services as a marketing research analyst. Evidence of the beneficiary's duties includes: the Form I-129 and letter of support from the petitioner, and counsel's response to the director's RFE.

The petitioner states generally that it is "aggressively pursuing numerous markets in North America, Latin America, Asia, and Europe," and that it needs a market research analyst to "expand on the company's ongoing international efforts." Specifically, the petitioner states that the beneficiary would be required to:

- Gather information about existing markets for the petitioner's products;
- Research high technology markets to determine potential utilization of the petitioner's products;
- Implement research methodologies and design formats for data gathering;
- Examine and analyze statistical data to forecast future marketing trends;
- Gather data on competitors and analyze related costs and methods of marketing and information distribution;
- Compare market strategies, pricing and technical specifications of competitors;
- Collect data on consumer preferences and technology utilization patterns;
- Research product advertising opportunities in trade magazines and periodicals;
- Perform statistical analysis of transaction prices of technology equipment sold in various markets;
- Prepare reports and graphic illustrations of findings;
- Make forecasts on anticipated product utilization;
- Research economic, technical, and market trends to enable company management to make short and long-term marketing decisions.

Neither the petitioner nor counsel offer a detailed description of the petitioner's marketing strategy or plan, or the specific role the beneficiary would play within the context of the petitioner's strategy. The petitioner's

relationship to its parent company is not described or explained, and no financial information is submitted about the U.S. affiliate, which is the petitioner in this case.

To make its determination whether the employment described qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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)).

The director found that the evidence failed to establish that the petitioner engages in the type of business that would employ a market research analyst, or that the petitioner has the organizational complexity to employ a market research analyst. The AAO disagrees and withdraws that portion of the director's decision.

The *Handbook* (2006-2007 Edition) indicates on pages 175-176, that market research analysts may reasonably be found in virtually every industry and business seeking to enhance the sales of its products and/or services. Further, the petitioner submits a letter from [REDACTED] who states that small businesses employ the services of market research analysts. Specifically, 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 data on past sales to predict future markets. 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 discussion, 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 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 might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways . . . .

The *Handbook* reflects on page 176, that, "a bachelor's degree is the minimum educational requirement for many market . . . research jobs."<sup>1</sup>

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<sup>1</sup> The *Handbook* does not indicate that the degree need be in any particular specialty, as required for a

The AAO finds that, although the petitioner has identified its position as that of a market research analyst, which may be a specialty occupation, the petitioner's description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention that the proffered position is that of a marketing research analyst.

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 – for example, market research analysts, “analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices sales, and methods of marketing distribution.” Although this type of generalized description is necessary when defining the general range of duties that may be performed within an *occupation*, it cannot be relied upon by a petitioner when discussing the duties attached to *specific employment*. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

The AAO finds that the petitioner has offered only a generic description of the beneficiary's proffered position duties. The record does not contain a specific or detailed description of the petitioner's business strategy or efforts to expand its international marketing efforts, or of the petitioner's strategy or efforts to aggressively pursue numerous markets throughout the world. Going on record without supporting documentation is not sufficient to meet 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)). Moreover, the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner failed to offer a detailed description of the beneficiary's duties within the context of its business. The petitioner's only references to the beneficiary's role within the petitioner's business plan were phrased in general terms – for example, “gather information about existing markets for the petitioner's products;” “gather data on competitors and analyze related costs and methods of marketing and information distribution;” and “examine and analyze statistical data to forecast future marketing trends.”

A general and uncorroborated statement of the petitioner's strategy for expanding its business cannot substitute for a description of the specific duties to be performed by the beneficiary. In the instant case, the petitioner has offered no specific description of the proffered position duties. Moreover, the record contains no evidence to indicate that the petitioner is conducting an international marketing campaign, as asserted on appeal, or to establish that the petitioner will employ a marketing research analyst to conduct the general described position duties. Company profile evidence contained in the record reflects that the petitioner is part of a larger company whose main facility is located in Japan. The company profile indicates that the petitioner's U.S. facility is part of a sales and support network for the Japanese parent company. The profile information indicates further that the company's products are manufactured by the parent company, and that the purpose of the facilities located outside of Japan is to maintain a high level of communication with customers throughout the world. The record does not establish any details about the market information to be gathered, the client base to be analyzed and targeted, the methodology to be employed, or the marketing research to be performed in relation to its business of distributing power supply circuits for its parent

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specialty occupation.

company. The AAO is thus unable to analyze whether the performance of such duties requires a baccalaureate degree in a specialty.

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. In the present matter, the petitioner's description of the duties of its position is without context, and generic. The AAO is unable to identify the actual tasks of the proffered position, or whether the position is that of a market research analyst. Further, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation -- employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. Accordingly, the AAO finds that the petitioner has failed to establish that the proffered position is a specialty occupation that requires a baccalaureate or higher degree or its equivalent as the minimum requirement for entry into the particular position, as set forth in 8 C.F.R. § 214.2(h)(4)(A)(iii)(1).

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner must establish that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

The petitioner submitted copies of several market research analyst job announcements to establish that the proffered position qualifies as a specialty occupation under the second criterion. The petitioner indicated that the submitted evidence is intended to establish the position of market research analyst as a common position required by similar types of companies. As previously noted, however, the present record contains no description of the beneficiary's specific job duties within the context of the petitioner's business. The petitioner has therefore failed to establish that the petitioner's business and needs are similar to those of the businesses contained in the announcements. The petitioner additionally asserts that an expert letter written by [REDACTED] establishes that the petitioner's business has a need for a market research analyst. The AAO finds that, while relevant to these proceedings, the opinion letter contained in the record is unsupported by independent evidence substantiating the author's opinion. CIS maintains discretion to use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In the present matter, the letter makes only general statements relating to the modern need by both large and small businesses for market research information. The letter does not discuss the petitioner's business specifically, and the letter provides no information relating to the petitioner's international marketing strategies or plans. There is thus an inadequate factual foundation to support the conclusion reached in relation to the petitioner's business. For the reasons stated above, the petitioner has failed to establish that a specific degree requirement is common to its industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which states that the employer normally requires a degree or its equivalent for the position, the AAO may review the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those

employees' diplomas. In the instant case, the position is new. Thus, the petitioner cannot establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to establish that the nature of the specific duties of the proffered 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. As previously discussed, the record fails to establish the specific proffered position duties, and fails to detail the duties of the position in the context of the petitioner's business in the United States. Consequently, the petitioner has failed to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 its burden. The appeal will therefore be dismissed, and the petition will be denied.

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