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U.S. Citizenship
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Services

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02

JAN 29 2007

FILE: LIN 05 206 51392 Office: NEBRASKA SERVICE CENTER Date:

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 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 newspaper that seeks to employ the beneficiary as a market research/business analyst. The petitioner, therefore, endeavors to classify the beneficiary 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 determination that the petitioner had failed to establish (1) that the proposed position qualifies for classification as a specialty occupation and (2) that the beneficiary is qualified to perform the duties of a specialty occupation. In denying the petition, the director found the duties of the proposed position similar to those of advertising, marketing, promotions, public relations, and sales managers.

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 weekly newspaper, with a circulation of 115,000 homes, aimed at the Indian American community. Three editions are published each week – one from New York, one from Chicago, and one from Atlanta. According to the petitioner’s September 16, 2005 response to the director’s request for additional evidence, the duties of the beneficiary would fall under seven broad categories: (1) analyzing and planning business strategies; (2) market research; (3) establishing research methodologies; (4) developing advertising strategies; (5) researching the petitioner’s competition; (6) preparing advertising and promotional material; and (7) public relations and brand-building activities. The petitioner provided additional information regarding the specific duties that the beneficiary would perform within each of these categories. The petitioner noted that while the Indian American community is growing, the competition from other newspapers directed toward its target audience is increasing. The role of the beneficiary would be to assist the petitioner in expanding its readership base and advertising revenue.

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 Department of Labor’s (DOL) *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

In reaching its conclusion regarding the nature of the proposed position, the AAO has reviewed the discussion of market or marketing research analysts at page 175 of the 2006-2007 edition of the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*). It has taken particular note of the following section of that discussion:

[M]arket research analysts devise methods and procedures for obtaining the data they need. They often design telephone, mail, or Internet surveys to assess consumer preferences. Some surveys are conducted as personal interviews by going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers, under the market research analyst’s direction, usually conduct the surveys.

After compiling the data, market research analysts evaluate them and make recommendations to their client or employer based upon 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 AAO finds that it is market research analysts' work in the design and analysis of original market research that sets this occupation apart from what might otherwise be characterized as marketing or sales manager positions, employment that also requires the incumbents to perform marketing research as they seek to identify and expand business opportunities for their employers.

The AAO concludes that the record of proceeding establishes that such functions are in fact encompassed within the duties proposed by the petitioner.

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 AAO finds that, in this particular record of proceeding, such a demonstration has been made.

The record establishes that the beneficiary earned a bachelor's degree in advertising from Marquette University in 2004. He therefore qualifies to perform the duties of this specialty occupation.

The petitioner has established that the proposed position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained and the petition 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.