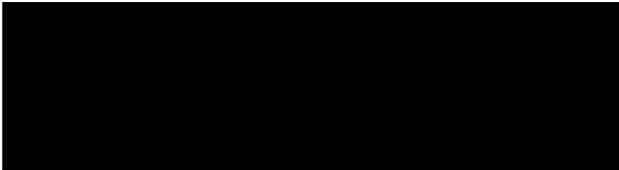




U.S. Citizenship
and Immigration
Services

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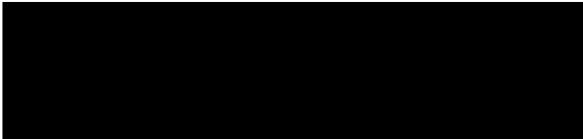
FILE: SRC 06 047 53313 Office: TEXAS SERVICE CENTER Date: **SEP 12 2007**

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 appeal will be sustained. The petition will be approved.

The petitioner is a consulting company. It seeks to employ the beneficiary as a marketing consultant 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 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 marketing consultant. 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:

- Analyze client's internal sales and financial data to analyze and understand growth and profitability indicators;
- Analyze external data to analyze client's performance vis-à-vis overall market, with focus on analysis of total market and brand share trends, competitive situation, distribution strategy, market dynamics in terms of new brand entries, advertising expenditure and consumer promotions;
- In the absence of market data, coach clients to invest in syndicated retail and/or consumer panel market research data or market surveys to enable completion of market assessment;
- Implement basic fundamentals of strategic and operational planning processes geared specifically towards small-medium sized companies experiencing unstructured fast growth, conducting a more detailed SWOT analysis;
- Implement HR assessments in conjunction with Profiles International to assist clients in eliminating inadequate people selection in the hiring process, reduce employee job dissatisfaction, reduce turnover, manage manpower planning and downsizing; and
- Create and maintain innovative and interactive web sites to support existing clients and facilitate prospecting.

The petitioner finds the beneficiary qualified for the proffered position by virtue of his bachelor's degree in business administration with a major in marketing from the University of Miami, and his extensive experience

in related business fields. The beneficiary presently serves as a mentor of graduate students at the University of Miami School of Business.

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. The duties of the proffered position are varied and combine duties normally performed by market research analysts and management analysts. The beneficiary will not only conduct market research and analysis on behalf of the petitioner's business clients, but participate in the implementation of his recommendations concerning business solutions in the areas of analysis. In addition thereto, the beneficiary will analyze business operations in such areas as human resources making recommendations to business clients for improvement in their organizational structure and efficiency. The petitioner provided sample consultant agreements documenting the nature and extent of the consultant services that it provides. The duties to be performed by the beneficiary in this instance, giving due consideration to the nature and scope of the services provided by the petitioner, are 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. The petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), and the proffered position qualifies as a specialty occupation.

The final issue to be determined is whether the beneficiary is qualified to perform the duties of the proffered position. The director did not comment on this issue as the petition was denied on another ground. The record, however, is sufficient for the AAO to make that determination. The beneficiary holds a bachelor's degree in business administration with a major in marketing from the University of Miami, as well as extensive experience in the field. The degree held by the beneficiary is closely related to the requirements of the proffered position, and the beneficiary is qualified to perform those duties. 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

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.