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U.S. Citizenship
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FILE: EAC 06 163 52452 Office: VERMONT SERVICE CENTER Date: **APR 03 2008**

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.

for Michael T. Kelly
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 defines its operation as one involved in "business development". It seeks to employ the beneficiary in a position entitled "Hispanic market research," 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 because 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.

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 (5th 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 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 in a position entitled “Hispanic market research.” 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:

- Create, prepare and review “questioners” in the Spanish language to understand the economic situation, economic development, international trade and commerce and how businesses develop themselves in order to be related to the American market;
- Establish research methods and design formats to gather data from Latin countries, sectors, companies and individuals interested in expanding abroad;
- Identify industry and commercial sectors that are growing in the economy of Latin countries and identify companies and individuals that need assistance to invest abroad;
- Analyze the comparative advantages of the production of Latin countries in terms of international commerce;
- Identify companies and individuals that need assistance to know the Florida advantages to invest and develop business, projects and trade opportunities;

- Organize meetings in the Spanish language, locally and abroad with potential Latin and South American investors to know better their needs and [concretize] the petitioner's technical assistance;
- Analyze statistical data on markets, price, sales, marketing methods, and customer's preferences;
- Prepare reports and graphic illustrations of findings;
- Prepare statistical inferences and regression curves preferable with econometrical orientation to discover tendencies in the short, medium and long term; and
- Perform regional market research to identify and target consumer behavior within the Hispanic market, establish research methodology, forecast trends and prepare reports reflecting findings.

To attempt to understand the duties to be assigned to the beneficiary, the scope and nature of the petitioner's business must be considered. The petitioner states on the Form I-129 that it has two employees and a gross annual income of \$110,657.49. In response to the director's request for additional evidence, the petitioner states that its business structure addresses two main activities: bookkeeping of companies and individuals; and providing assistance to companies and individuals in initiating new businesses – the petitioner states that it assists in understanding the business market for specific businesses, assists in locating commercial space with the help of real estate specialists, and in obtaining small business loans. The two employees of the petitioner provide the following services: bookkeeping; assistance in opening new businesses and obtaining small business loans; and providing Notary Public services, supervision of bookkeeping, paper work for licenses, and tax preparation assistance.

To determine whether the duties described are those of a specialty occupation, the AAO first considers 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 often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

As the petitioner has characterized its position as that of a Hispanic market researcher, the AAO first turns to the *Handbook's* description of market and survey researchers, the occupational title that is most closely related to the proffered position, as the duties of the position are detailed by the petitioner. The *Handbook*, 2006 – 07 edition, at page 175, describes the occupation of market or marketing research analysts as follows:¹

¹ The 2006–2007 *Handbook* does not state that the degree must be in a particular specialty.

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 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.

The record's information about the proffered position and its duties comport with the *Handbook's* general information about the market research occupation. However, the issue of whether the particular position qualifies as a specialty occupation position depends upon the evidence of record about the specific concrete work that the beneficiary would perform within the petitioner's particular business operations. The AAO notes this fundamental evidentiary deficiency in the record's description of the proffered position and its duties: they are exclusively generalized and generic, and, therefore fail to convey sufficient information for the AAO to reasonably conclude that the work that would actually be performed under the job title requires at least a bachelor's degree level of knowledge in a specific specialty.

While the petitioner has identified its position as that of a Hispanic market researcher (market research analyst), its description of the beneficiary's duties is so generic and nonspecific that it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis. In its April 25, 2006 support letter, the petitioner stated that the beneficiary would: find conditions to determine potential sales for growth; establish research methods and design formats to gather data; analyze statistical data to forecast future market trends; gather data on competitors and analyze price, sales, and methods of marketing; collect data on customer preferences; and prepare reports and graphic illustrations of findings, etc. 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 in the *Handbook* or the *Dictionary of Occupational Titles (DOT)* in discussing an occupational title. As a result, the director requested a more detailed job description in his request for additional evidence. The expanded description offered by the petitioner was again, vague and generic, e.g., establishing research methods and design formats to gather data; analyze statistical data on markets, price, sales, marketing methods and customer preference; and preparing reports and graphic illustrations of findings. The lack of detail provided in the record for the duties assigned to the beneficiary precludes an analysis by the AAO of the duties to be performed. Thus, it cannot be determined that the performance of the duties require the theoretical and practical application of a body of highly specialized knowledge normally associated with a baccalaureate level education. For example:

- The petitioner states that the beneficiary would create, prepare and review questionnaires to understand the economic situation, economic development, international trade and commerce of businesses and how they relate to the American market.

The petitioner does not specifically detail what tasks the beneficiary would perform in completing this duty. The record does not disclose what knowledge or information is required to prepare questionnaires, the specific market to which these questionnaires would be directed, how recipients of

any questionnaires would be identified, what type of information is being sought, what markets or businesses are being targeted, or the scope and nature of any commerce or trade to be developed.

- The petitioner states that the beneficiary would identify industry and commercial sectors that are growing in Latin countries and identify companies that need assistance in investing abroad.

The record does not disclose how the beneficiary would identify industry and commercial sectors growing in Latin countries, what tasks would be necessary to identify any such industry or sectors, or how the beneficiary would identify companies needing assistance in investing abroad.

- The petitioner states that the beneficiary would analyze comparative advantages of the production of Latin countries in terms of International Commerce, identifying companies and individuals that need assistance in knowing Florida advantages to investing and developing business projects and trade opportunities.

The record does not disclose what tasks the beneficiary would perform in analyzing comparative advantages of the production of Latin countries in International Commerce, what comparative advantages are to be analyzed, what data would be assembled in making that analysis, or how any such data would be obtained. Further, the petitioner does not explain what tasks the beneficiary would perform in identifying companies and individuals needing assistance in understanding the advantages of investing and developing business projects in Florida.

- The petitioner states that the beneficiary would analyze statistical data on markets, price, sales, marketing methods and customer preferences, preparing reports and graphic illustration of findings.

The record does not disclose what tasks the beneficiary would perform in analyzing statistical data on markets, price, sales marketing methods and customer preferences. Nor does the record disclose how any data would be obtained, or identify what markets and related prices, sales, marketing methods, and customer preferences would be studied, or relate how those tasks are related to the petitioner's business operations as those operations are detailed by the petitioner.

The duties detailed by the petitioner are described in such vague and general terms that it is impossible to determine not only what tasks would be performed by the beneficiary as described, but how these tasks relate to the petitioner's business structure and stated services. The evidence of record does not identify the methodologies and analytical tools the beneficiary would apply and why their application to the petitioner's work would require at least a bachelor's degree level of knowledge in a specific specialty. Without this type of description, the AAO is unable to determine whether the responsibilities of the proffered position would require the beneficiary to hold the minimum of a baccalaureate or higher degree or its equivalent to perform them. Accordingly, the record does not establish that the offered position qualifies as a specialty occupation under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the proffered position qualifies as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – establish that a degree

requirement is common to the 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, on appeal, a single job advertisement for a manager of strategic marketing which requires a bachelor's degree in order to establish the first prong of this criterion. The advertisement does not state that the degree need be in any particular educational discipline. Further, the company does not appear to be similar to that of the petitioner in business function. The advertisement is, therefore, of little evidentiary value and does not establish the first prong.

The petitioner also provided two opinion letters to establish that the proffered position qualifies as a specialty occupation, and that the duties of the position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty:

1. Opinion of [REDACTED], American Evaluation and Translation Services, Inc.

[REDACTED] opines that "in order to adequately perform the responsibilities required for the job of Hispanic Market Researcher . . . an individual would need the knowledge obtained by acquiring a Bachelor's degree in Business Administration, Economics or a related subject." [REDACTED] opinion, however, is of little evidentiary value as it provides an insufficient factual foundation for his opinion. The opinion writer merely quotes the duties of the position as detailed by the petitioner, and states that the position requires a bachelor's degree. He references no labor market survey, study or any other material lending support to his opinion. He does not provide a factual analysis that substantiates the conclusions as accurate and reliable. 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)). As previously noted, the duties detailed by the petitioner in the present record are presented in such vague and nonspecific terms that it cannot be determined precisely what duties the beneficiary will actually perform.

2. Opinion of [REDACTED], American Evaluation and Translation Services, Inc.

[REDACTED] opines that "in order to adequately perform the responsibilities required for the job of Hispanic Market Researcher . . . an individual would need the knowledge obtained by acquiring a Bachelor's degree in Business Administration, Economics or a related subject." Again, the opinion writer's opinion is of little evidentiary value as it provides an insufficient factual foundation for the opinion. As with [REDACTED]'s document, [REDACTED]'s submission lacks analytical detail sufficient to establish its accuracy and reliability. [REDACTED] merely quotes the duties of the position as detailed by the petitioner, and states that the position requires a bachelor's degree. He references no labor market survey, study or any other material lending support to his opinion. 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)). As previously noted, the duties detailed by the petitioner in the present record are presented in such vague and nonspecific terms that it cannot be determined precisely what duties the beneficiary will actually perform.

For the foregoing reasons, the opinions submitted will be afforded little evidentiary weight. 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 either prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine the petitioner's ability to meet the third criterion, the AAO normally reviews 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 employee's diplomas. The petitioner offers no evidence regarding this criterion. The petitioner has failed to establish the criterion at 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 a petitioner to establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO here incorporates this decision's earlier discussion about the evidentiary deficiencies of the record's information about the work to be performed in the proffered position. The duties of the proffered position as described are too generic to determine what specific tasks would be performed by the beneficiary. The generic description of the duties of the proffered position discussed under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) also makes it impossible to evaluate these duties under the specialized and complex threshold of the fourth criterion. Accordingly, the AAO concludes that the proffered position is not a specialty occupation under the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the Form I-129 petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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