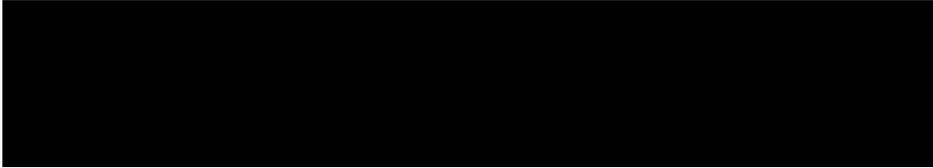


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U.S. Citizenship
and Immigration
Services

02



FILE: WAC 07 138 53882 Office: CALIFORNIA SERVICE CENTER Date: **OCT 30 2008**

IN RE: Petitioner:
Beneficiary:



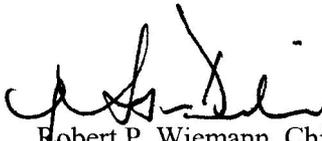
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.


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 a Thai cuisine restaurant that seeks to employ the beneficiary as a business development analyst. It endeavors to classify her 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 business development 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:

- Evaluate current marketing and business strategies of the petitioner in order to understand hurdles being faced by the petitioner;
- Determine deficiencies in business operations in order to expand sales;
- Identify, develop and participate in the implementation of a smart-growth business plan for expansion through industry research, profitability reports, budget analysis, and cost/benefit analysis;
- Conduct independent research of the industry and analyze the petitioner’s current operations and financial position;
- Analyze the petitioner’s current vendors and their relative strengths and weaknesses compared to other potential wholesalers;
- Establish economies of scale wherever possible making most efficient use of vendor resources;
- Engage all facets of the petitioner’s business in order to recommend a sustainable path of growth;
- Compose reports in support of loan applications and other bank negotiations;
- Gain understanding of the requirements for franchising operations to third party buyers, necessitating the ability to communicate effectively with all persons concerned with marketing opportunities;

Research options for capitalization, including wide-ranging opportunities from small business federal agencies to private equity firms; and

- Participate in the execution and systematic monitoring of business plans to measure their effectiveness.

The petitioner requires a minimum of a bachelor's degree in accounting, marketing, economics or other directly related business administration degree.

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. Though varied, the duties of the proffered position appear to be those noted for market and survey researchers (market research analysts). The *Handbook*, 2008 – 09 edition, states as follows with regard to this position:

Market and survey researchers gather information about what people think. *Market*, or *marketing, research analysts* help companies understand what types of products people want and at what price. They also help companies market their products to the people most likely to buy them. 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 surveys to assess consumer preferences through Internet, telephone, or mail responses. 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.

After compiling and evaluating the data, market research analysts make recommendations to their client or employer. 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 also may be used to determine the advisability of adding new lines of merchandise, opening branches of the company in a new location, or otherwise diversifying the company's operations. Market research analysts also might develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

Survey researchers also gather information about people and their opinions, but these workers focus exclusively on designing and conducting surveys. They work for a variety of clients, such as corporations, government agencies, political candidates, and providers of various services. The surveys collect information that is used in performing research, making fiscal or policy decisions, measuring the effectiveness of those decisions, or improving customer satisfaction. Analysts may conduct opinion research to determine public attitudes on various issues; the research results may help political or business leaders to measure public support for their electoral prospects or social policies. Like market research analysts, survey researchers may use a variety of mediums to conduct surveys, such as the Internet, personal or telephone interviews, or questionnaires sent through the mail. They also may supervise interviewers who conduct surveys in person or over the telephone.

Survey researchers design surveys in many different formats, depending upon the scope of their research and the method of collection. Interview surveys, for example, are common because they can increase participation rates. Survey researchers may consult with economists, statisticians,

market research analysts, or other data users in order to design surveys. They also may present survey results to clients.

The *Handbook* notes that a bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree may be required, especially for technical positions. 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. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines. A degree in a specific specialty, however, is not required. Appropriate education may be obtained in a wide range of educational disciplines. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner does not assert that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the petitioner has not established that the nature of the 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. As described by the petitioner, the duties to be performed by the beneficiary are essentially the same as those noted in the *Handbook* for market research analysts, which are routinely performed by individuals with educational backgrounds in unrelated 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).

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.