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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: WAC-99-144-53398 Office: California Service Center

Date: 29 NOV 2001

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a diamond wholesale business with 9 employees and a gross annual income of \$397,027. It seeks to employ the beneficiary as a market research analyst for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief and a photocopy of a document previously submitted with the petition.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The issue to be examined in this proceeding is whether the beneficiary is qualified to perform the services of a specialty occupation, in this case a position as a market research analyst.

On appeal, counsel contends that the Service erred in its finding that a master's degree is a requirement for a position as a market research analyst because the Department of Labor's Occupational Outlook Handbook (Handbook) does not specify that all private sector companies require a master's degree for positions as economists and market research analysts. Counsel contends that, according to the Handbook, a bachelor's degree is a standard requirement for an entry-level position as an economist.

The record indicates that the beneficiary received a Bachelor of Commerce degree from an Indian university and also passed the first

year of a two-year Master of Commerce program at the same university. An educational evaluation service found the beneficiary's foreign education to be equivalent to a Bachelor of Science degree in Business Administration awarded by regionally accredited colleges and universities in the United States.

The duties of the proffered position are described in pertinent part as follows:

He will be responsible for establishing guideline [sic] and procedures in distributing the product line of diamonds. He will analyze the market segment and forces which impact the sales volumes of the diamond industry. From that analysis, he will detail and structure sales and marketing plan for the company.

The duties described are the responsibilities of a market research analyst. According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 148, a market research analyst is concerned with the potential sales of a product or service, and he or she analyzes data and information to predict future sales. Therefore, as the job meets the requirements of the specialty occupation of a market research analyst, the beneficiary's educational and employment experience must meet the minimum requirements for a market research analyst.

At page 149 of the Handbook, the DOL states the following about the level of training required for market research analysts:

Graduate training is required for many private sector economist and marketing research analyst jobs... A bachelor's degree with a major in economics or marketing may not be sufficient to obtain some positions as an economist or marketing analyst, but is excellent preparation for many entry-level positions as a research assistant, administrative or management trainee, marketing interviewer, or any of a number of professional sales jobs.

Counsel argues on appeal that the Handbook states a bachelor's degree is a minimum requirement for most entry-level positions as an economist in the federal government. Counsel further contends the Handbook does not state that a master's degree is required for all private sector positions as economists or market research analysts, nor does the Handbook state that marketing research analysts must earn advanced degrees. Counsel submits a photocopy of a letter from the petitioner describing the duties of the proffered position which was initially submitted with the petition.

In the instant case, the beneficiary is seeking employment as a market research analyst in the private sector and has the foreign

equivalent of a bachelor's degree in business administration. The beneficiary does not hold a master's degree, which the DOL indicates is generally the minimum requirement for a market research analyst job in the private sector.

Furthermore, even if the Service were to conclude that a bachelor's degree is sufficient for a market research analyst position within the petitioner's industry, the beneficiary would still not be eligible to perform the duties of the offered position because she does not possess a bachelor's degree in the specific field of either economics or marketing. Rather, the beneficiary's bachelor's degree is in commerce, which although related to the industry in which the beneficiary works, does not qualify her for a market research analyst position.

The petitioner has not persuasively established that the offered position can be classified other than as a market research analyst, or that the minimum requirement for the position that the petitioner is offering is bachelor's degree in commerce. Accordingly, the decision of the director will 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 not sustained that burden.

ORDER: The appeal is dismissed.