U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship
and Immigration
Services

[redacted]

D2

FILE: WAC 02 263 52442 Office: CALIFORNIA SERVICE CENTER Date: APR 27 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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.

Marin Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a corporation that provides medical and non-medical personnel to support persons needing home healthcare. The petitioner has a total of six offices, which are located in three states. In order to employ the beneficiary as a marketing analyst/project manager who would be devoted to expanding its business, the petitioner 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).

Upon review of the entire evidence of record in this proceeding, with special attention to the proposed duties and the business context in which they would be performed, the AAO has determined that the specific position proffered by this petitioner substantially comports with the market research analyst occupation as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source of information on the duties and educational requirements of a wide variety of occupations. As the *Handbook* indicates that employers of market research analysts normally require educational credentials that are consistent with the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), the director's decision must be withdrawn.

In reaching its decision, the AAO specifically found a sufficient factual basis in the record to support counsel's contention that the petitioner's business circumstances establish a reasonable basis for the petitioner to seek to add the proffered position to its staff.

The request for evidence (RFE) previously issued in this proceeding did not address the beneficiary's qualification to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2 (h)(4)(iii)(C). Therefore, to comply with 8 C.F.R. § 103.2 (b)(8), the director must issue an additional RFE to provide the petitioner with the opportunity to submit evidence regarding the beneficiary's qualification to serve in the specialty occupation. In accordance with 8 C.F.R. § 103.2 (b)(8), the director shall allow the petitioner twelve (12) weeks to respond to the RFE.

The director shall then render a new decision based on the evidence of record as it relates to the statutory and regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's September 26, 2002 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.