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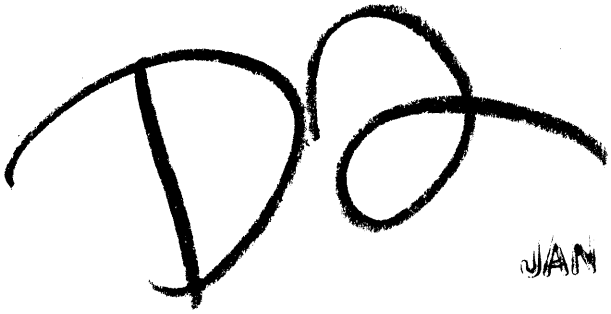

JAN 31 2005

FILE: LIN 03 179 50792 Office: NEBRASKA SERVICE CENTER Date:

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, Director
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 is an insurance agency and seeks to employ the beneficiary as an assistant Chinese market analyst. 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief stating that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the offered 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)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 requests for additional evidence; (3) the petitioner's response to the director's requests; (4) the director's denial letter; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an assistant Chinese market analyst. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: assist in marketing and public opinion research and apply research methodologies, design samples, questionnaires, and research instruments (40 percent of the time); manage projects, apply advance inference and multivariate statistics to analyze data and information, and prepare research reports for clients in various industries (35 percent of the time); develop the Chinese market, expand business in Chinese speaking areas, and create proposals and reports in both Chinese and English (15 percent of the time); and conduct Chinese media content analysis and estimate budgets (10 percent of the time). While the petitioner does not specifically state that it requires a bachelor's degree in any specific specialty for entry into the proffered position, it does indicate that the petitioner qualifies for the position by virtue of her Bachelor's Degree in Business Administration and Master of Science Degree in Management.

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. The duties of the proffered position are presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would: assist in marketing and public opinion research and apply research methodologies, design samples, questionnaires, and research instruments; manage projects; apply advance inference and multivariate statistics to analyze data and information; prepare reports for clients in various industries; and develop the Chinese market. The record does not indicate, however, what tasks the beneficiary would perform in applying research methodologies, design samples, questionnaires and research instruments, or the type or purpose of market information being sought by any market research. It does not establish what tasks would be performed in managing projects or what type of projects would be managed, or what data would be subjected to advance inference and multivariate statistics, or what type of reports would be prepared for clients in unnamed industries. The beneficiary must do more than simply restate or rephrase the *Handbook* or *Dictionary of Occupational Titles (DOT)* definition of a market research analyst in defining the duties of the proffered position. It must specifically detail the regular and recurring duties of the position so that an

analysis can be made of the nature and complexity of the tasks to be performed. This, the petitioner has failed to do, and, as such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel position among similar organizations; the duties of the offered position are so complex or unique that they can be performed by an individual with a degree in a specific specialty; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*), (*2*), or (*4*). The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position as this is a new position with the company, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

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 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.