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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 060 52314 Office: CALIFORNIA SERVICE CENTER Date: JUN 26 2006

IN RE:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a dying, wholesaler, and manufacturing company that seeks to employ the beneficiary as a market research analyst. The petitioner, therefore, 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 finding that the proffered position is not a specialty occupation, and the beneficiary is not qualified to perform a specialty occupation. Counsel submitted a timely appeal.

The AAO will first consider the director's finding that the proposed position fails to qualify as 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.

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 is 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 and the brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a market research analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties as follows:

- Analyze sales and financial data, implementing promotional strategies and managing marketing campaigns; develop and implement the marketing plan and strategies; design to the petitioner's target market shares.
- Devise methods to increase market profitability, manage expenses or reduce overhead costs; analyze market conditions and demand in local, regional, national, and international markets; identify marketing tactics/approach to increase target share (customer awareness).
- Monitor marketing trends and competition to ensure marketing plans and strategies meet the market demand and condition; provide appropriate trend and activity reports.
- Examine and analyze data to forecast methods of marketing and public relations (i.e. identification or new target market "clients" and expansion and retention of existing market "clienteles") through implementation of marketing tactics to ensure optimum market penetration with minimal expenditures.
- Perform market review and research studies to determine new sources of products from the Far Eastern and European countries suitable for local markets.
- Conduct marketing surveys and feasibility studies to determine profitability.
- Establish comparative market studies by gathering data on competitors and analyzing prices, sales, methods of marketing, and product distribution.

For the proposed position, the petitioner asserts that it requires a baccalaureate degree or its equivalent in business, marketing, commerce, or a related degree.

In denying the petition, the director stated that some of the proposed duties reflect those of a market research analyst as that occupation is described in the 2004-2005 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and he indicated that the *Handbook* reveals a market research analyst is a specialty occupation. The director stated that sole reliance on duties resembling those of a market research analyst as described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)* is misplaced, however. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties of the position combined with the nature of the petitioning entity are factors that CIS considers. According to the director, each position is evaluated based on the nature and complexity of its job duties. The director stated that a beneficiary's degree in a related area does not guarantee the position is a specialty occupation; nor does performing incidental specialty occupation duties. According to the director, the

petitioner does not engage in the type of operation that typically requires the services of a market research analyst on a regular full- or part-time basis for a significant period and does not have the size, scope, or organizational complexity to require market research analyst services. The director concluded that the proposed duties more closely resemble those of a marketing manager, and that the *Handbook* conveys that a marketing manager is normally not required to possess a bachelor's degree in a specific specialty. The director found that the petitioner established none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director determined that the beneficiary is not qualified to perform a specialty occupation.

On appeal, counsel states that the submitted evidence indicates that the offered position is that of a market research analyst. According to counsel, the *Handbook* reveals that a market research analyst qualifies as a specialty occupation as it requires a bachelor's degree. Counsel asserts that the director failed to consider the size and complexity of the petitioner's organization. According to counsel, the petitioner, with an annual net revenue of \$20 million, employs 339 employees and oversees a company with 265 employees. Counsel states that a marketing manager requires a bachelor's degree, and that employers prefer that the degree be in a certain related field. Counsel points to Internet job postings to establish that the offered position is a specialty occupation. Counsel maintains that the beneficiary is qualified for the proposed position.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. In the context of the submitted evidence of the financial records, the organizational chart, the marketing brochure, and other documentary evidence the nature of the proposed duties is specialized and complex, requiring the knowledge that is usually associated with the attainment of a bachelor's degree in business or a related field.

The AAO will now address whether the beneficiary is qualified for the proposed position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner's December 10, 2002 letter states that the proposed position requires a bachelor's degree or its equivalent in business, marketing, commerce, or a related degree. The 2006-2007 edition of the *Handbook* indicates that market and survey researchers complete coursework in business, marketing, consumer behavior, economics, psychology, English, sociology, mathematics, statistics, sampling theory, survey design, and computer science.

Upon review of the record, the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position.

Counsel asserts that the beneficiary is qualified for the proposed position as he holds the educational equivalent of a baccalaureate degree in political science from an accredited U.S. university. The record contains an evaluation of education by a credentials evaluation service which specializes in evaluating foreign educational credentials. The evaluation by HR Analytical Services indicates that the beneficiary holds the educational equivalent of a bachelor's degree in political science from an accredited university in the United States. The beneficiary's transcript reflects that he completed seven courses that relate to the position of a market and survey researcher as such coursework is in the *Handbook*. Thus, the AAO is persuaded that the educational evaluation establishes the beneficiary's qualifications for the proposed position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

As related in the discussion above, the petitioner has established that the proposed position is a specialty occupation and beneficiary is qualified to perform the duties of the position.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.