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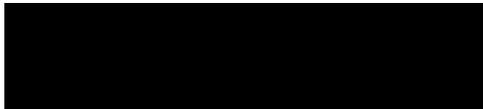
U.S. Citizenship
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FILE: WAC 04 116 52298 Office: CALIFORNIA SERVICE CENTER Date: **AUG 24 2005**

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.

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Robert P. Wiemann, Director
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 private, minority-owned small business that provides high-tech services in the telecommunications, cabling, and wiring industry. In order to employ the petitioner as a market research 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 on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). For reasons that will be discussed below, the AAO finds that director erred in not approving the petition, as the evidence of record does establish that the petitioner has proffered a specialty occupation position.

The Department of Labor's *Occupational Outlook Handbook (Handbook)*, which Citizenship and Immigration Services (CIS) recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations, does not indicate that marketing research analyst positions are confined to businesses with a "marketing division, department, team, staff or . . . marketing specialists" or a certain type of "organizational complexity," as found by the director. Also, the *Handbook* does not indicate that the need for market research analysis or in-house market research analysis positions is confined to any particular types of business.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] 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 [2] 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.” (Italics added.)

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.

CIS has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

Exhibit A of the petitioner’s response to the director’s request for additional evidence states that the beneficiary will:

Develop, execute, and make decisions in marketing business plans and policies, both long and short term, based upon economic/marketing data and analysis for the communication and security systems in the ultra high capacity wireless and fiber optic market.

Search out and assist client and customer concerns in the United States and Latin America in need of [the petitioner’s] services. Explain market and provide translation services to the company’s clients in the U.S. and abroad.

Establish marketing goals through marketing and business analysis, to maintain and increase market share and profitability of communication and security systems services in the Hispanic markets (both in the United States and Latin America)

Plan, set up, and organize marketing and promotional strategies to meet with business and marketing demand for professional services with communication and security systems.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In this particular case, the petitioner has provided extensive documentation which reveals significant, probative aspects of the petitioner's operations, including, but not limited to: the nature of the multi-faceted wireless and fiber optics market that it is targeting; aggressive marketing goals; and substantial market-growth projections that would be dependent upon the use of a market research analyst. By fortifying the job description with the detailed, petitioner-specific information provided in these documents, the petitioner has established that performance of the beneficiary's day-to-day work would require the theoretical and practical application of the master's degree level of specialized knowledge that the *Handbook* recognizes as a requirement for most market research analyst positions in private industry.

The petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status positions for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The evidence of record establishes that the beneficiary holds a bachelor's degree in engineering from Arizona State University and a master's degree in business administration from Keller Graduate School of Management. These credentials and the related academic transcripts in the record satisfy the beneficiary qualification criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) by establishing that the beneficiary holds "a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university."

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.