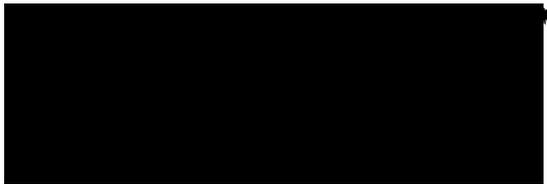




U.S. Citizenship
and Immigration
Services

PHOTIC COPY
Identifying data deleted to
prevent disclosure of warrants
invasion of personal privacy



DR

JUN 08 2005

FILE: EAC 03 084 52283 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the Vermont 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 video production and post production house, with six employees. It seeks to hire the beneficiary as marketing research analyst. The director denied the petition based on her determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and new and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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.

The petitioner states that it is seeking the beneficiary’s services as a market research analyst. Evidence of the beneficiary’s duties includes: the Form I-129; a January 14, 2003 letter of support from the petitioner; and the petitioner’s June 23, 2003 response to the director’s request for evidence, which included a list of the petitioner’s clients.

At the time of filing, the petitioner stated that the beneficiary would be required to:

- Research market conditions nationally and internationally to determine potential sales of ANS products and services such as films, TV series, music film licensing and distribution as well as audiovisual production and post production services;
- Gather information and data on competitors, prices, sales and methods of marketing and distribution;
- Compile reports from survey results of the gathered information;
- Analyze customer lists to determine type of client database;
- Categorize ANS' thousand plus client database;
- Categorize customer segment to determine customer industries in order to customize ANS services to conform to customer needs;
- Review and analyze all sales by item or services category database to determine which items, services and products are in demand, which should be most highly promoted, etc.;
- Analyze statistical data or past sales to predict future sales;
- Make recommendations to ANS for sales, marketing and business expansion based on research and surveys; and
- Develop advertising, marketing and sales policies to expand ANS business.

In response to the director's request for evidence, the petitioner offered a more detailed description of the position. The petitioner indicated that the beneficiary would "segment the market for each product and service category, monitor and measure customer response, and provide effective feedback on ANS' marketing and sales initiatives. The beneficiary would determine "objectives of ANS database marketing and integrate database marketing into the overall marketing strategy; categorize and oversee the functional evolution of ANS thousand-plus client database through transaction knowledge, list management, database analysis, contact management, software evolution, and customer relationship management." The petitioner described how the beneficiary would use various statistical methods "to analyze dependent and independent variables of past and present sales figures to identify relations between these variables and discern patterns to forecast future sales by product and service categories."

In his denial, the director questioned whether the petitioner had sufficient H-1B work to employ the beneficiary for the requested period of time, as well as its need for the services of a market analyst. The director found that although the proposed duties appear to be the duties normally required of a market research analyst, the petitioner did not establish that its business required the services of a professional market research analyst.

The AAO does not agree with the director's conclusions regarding the industries in need of market research analysts. Based on the discussion of the occupation in the 2004-2005 edition of the *Handbook*, it concludes that such analysts may reasonably be found in virtually every industry and business seeking to enhance the sales of its products and/or services.

On appeal, counsel states that the duties of the proffered position are consistent with the duties of a market research analyst. The duties of the position require a theoretical and practical application of a body of highly specialized knowledge and are at a level of responsibility of a market research analyst. On appeal, counsel contends that the director's characterization of the petition as a small video company is misleading. Counsel states that the petitioner "is one of the largest video production companies in Turkey with three television studios and collaborative ventures with Fremont, Grundy and Hearst." Additionally, counsel refers to an evaluation of the job duties written by a professor of marketing that was previously submitted in the response to the request for evidence. This evaluation indicates that the position requires a candidate to have a bachelor's level education in business administration, marketing or a related field.

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.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only

degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states that for a market research analyst, a master's degree in business administration, marketing, statistics, communication or a closely related field is required.

Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record reflects that the beneficiary has the equivalent of a master's degree in business administration, indicating that she is qualified for this specialty occupation.

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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.