

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

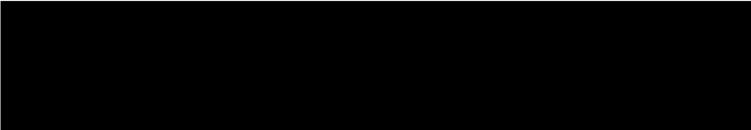
FILE: EAC 04 247 53146 Office: VERMONT SERVICE CENTER Date: JUN 04 2007

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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides travel services, has five employees, and claims a gross annual income of six million. It seeks to employ the beneficiary as a market research analyst. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 record of proceeding includes: (1) the August 21, 2004 Form I-129 and supporting documents; (2) the director's October 19, 2004 request for further evidence (RFE); (3) the petitioner's January 6, 2005 response to the RFE; (4) the director's January 28, 2005 denial decision; and (5) counsel's Form I-290B in support of the appeal. The AAO reviewed the record in its entirety before rendering its decision.

On January 28, 2005, the director denied the petition determining that the proffered position was not degree specific and was not a specialty occupation. The director also determined that the beneficiary was not eligible to perform the duties of a specialty occupation. On appeal, counsel for the petitioner asserts that the director relied unduly on the Department of Labor's *Occupational Outlook Handbook (Handbook)*, failed to consider the employer's view of the proffered position, failed to consider the employer's evidence, and that the position should be considered a specialty occupation based on the complexities of the duties.

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.

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 petitioner stated in its August 18, 2004 letter in support of the position and in a supplement to the Form I-129 that it sought to employ the beneficiary to perform the duties of a market research analyst and further:

As a Market Research Analyst, [the beneficiary] will be involved in marketing strategy to reach potential clients. He will analyze existing and potential product/services markets. He will also be responsible for collecting and analyzing data on established and prospective customers and on competitors, and will prepare reports that interpret market conditions and potentials.

He will prepare reports that interpret market conditions and potentials, investigate methods, and costs of distribution, and advertising. He will examine and analyze statistical data to forecast future marketing trends in advertising as well as video information products. He will prepare background material and follow performance of advertising companies with an emphasis on video information products.

He will analyze government policy, daily press material, industry and trade publication and provide recommendation to the management. He will perform due diligence on companies by talking to management, customers, business partners and technology consultant.

He will study industry-specific level of technological innovation and suggest for up-gradation to top management. He will analyze global competition, macro-economic, industry data, and

internal data of the company particularly price and volume data. He will research the product classes, prepare offer documents, identify and contact the prospective clients.

The Market Research Analyst will appropriately apportion his time to various aspects of his work, depending upon the needs of the particular application or project. These skills can be acquired through successful pursuit of at least a Bachelors degree in Science, Commerce or Business Administration, or the equivalent in education and experience.

In a January 6, 2005 response to the director's RFE, the petitioner provided a similar description as the one initially provided and added the percentages of time the beneficiary would spend on the various activities as follows:

Analyzes existing and potential product/services markets. Collecting and analyzing data on established and prospective customers and on competitors. Research the product classes, prepare offer documents, identify and contact the prospective clients. Effort approx. 25%

Development, planning, coordinating and conducting training programs for travel agents. Development of Marketing Training programs to address sales skill gaps. Effort approx. 15%

Prepare reports that interpret market conditions and potentials, investigate methods, and costs of distribution, and advertising. Examine and analyze statistical data to forecast future marketing trends. Prepare background material and follow performance of advertising companies. Effort approx. 25%

Analyze government policy, daily press material, industry and trade publication and provide recommendation to the management. Conduct training to address changes in policies and procedures. Effort approx. 20%

Study industry-specific level of technological innovation and suggest for up-gradation to top management. Analyze global competition, macro-economic, industry data, and internal data of the company. Effort approx. 15%

The petitioner provided several copies of its advertisement for the position indicating that the individual in the market research analyst position would:

[D]evelop marketing strategy, collect and analyze data on established and prospective customers, prepare reports that interpret market conditions and potentials, examine and analyze statistical data to forecast future marketing trends, analyze global competition, Industry data and internal data of the company, identify and contact the prospective clients.

The petitioner also submitted two job announcements for positions of: (1) a senior research analyst for a travel, hospitality and meetings market research service provider that required a college degree in an unspecified discipline; and (2) a market research analyst for the Office of Trade and Tourism that does not

identify the academic education required for the position. The petitioner further provided a transfer certificate of one of its employees, employed as a marketing executive. The transfer certificate indicated that the individual in the position of marketing executive had completed a three-year course from the Maris Stella College in Vijayawada, India and had received a bachelor's of art degree. The petitioner also noted that as it was expanding it required a marketing research analyst with experience in the field of sales and marketing in the travel industry.

On January 28, 2005, the director denied the petition noting that the *Handbook* reports that bachelor's degree holders who majored in marketing and related fields may qualify for many entry-level positions that might or might not be related to market and survey research. The director also observed that the petitioner had employed an individual with a bachelor's of arts degree as a marketing executive, but that the petitioner had not provided evidence in the form of a copy of the actual degree or transcripts that listed the individual's major and coursework. The director concluded that the petitioner's entry-level position for a market research analyst is not degree specific and thus could not qualify as a specialty occupation.

As observed above, counsel for the petitioner asserts on appeal: that the director relied unduly on the Department of Labor's *Occupational Outlook Handbook (Handbook)*; that the director failed to consider the employer's view of the proffered position; that the director failed to consider the employer's evidence; and that the position should be considered a specialty occupation based on the complexities of the duties.

Counsel's assertions are not persuasive. The *Handbook* states the following with regard to the employment of marketing research analysts:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze statistical data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need. Often, they design telephone, mail, or Internet surveys to assess consumer preferences. They conduct some surveys as personal interviews, going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys under the market research analyst's direction.

After compiling and evaluating the data, market research analysts make recommendations to their client or employer on the basis of their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Market research analysts also might develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

* * *

Because of the applicability of market research to many industries, market research analysts are employed throughout the economy. . . .

The *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey research jobs. It does not however, indicate that the degrees held by candidates must be in a field directly related to market research as required for classification as a specialty occupation. Accordingly, the title of market research analyst does not establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Moreover, the petitioner's description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention that it is offering the position of a market research analyst.

At the time of filing, the petitioner offered a generic description of the beneficiary's market research duties, one that appeared to describe the occupation of market research analyst rather than that of a specific position. The director found this description insufficient to establish the position as a specialty occupation and asked for further information, specifically requesting a description of the beneficiary's proposed duties and responsibilities and the percentage of time the beneficiary would use to perform each of the proposed duties each day. In response, the petitioner provided a similarly generic description of the beneficiary's duties, adding a percentage of time the beneficiary would spend on the various duties, and omitting vaguely described duties that appeared to relate to other industries.

The petitioner in this matter borrows from the *Handbook's* descriptions of the occupation of a market research analyst in an effort to establish that the beneficiary would perform this work. However, a petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., a market research analyst gathers statistical data on competitors and examines prices, sales, and methods of marketing and distribution. Neither can the petitioner establish its employment as a specialty occupation by making conclusory statements regarding the position, rather than defining the activities associated with the position, for example, describing how the beneficiary assesses the market conditions for the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, the petitioner must describe the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business interests.

In this matter for instance, the petitioner indicates the beneficiary will analyze existing and potential product/services markets, collect and analyze data on customers and competitors, research products, prepare offer documents, prepare reports that interpret market conditions, analyze statistical data to forecast future marketing trends, and so on. These are generic duties outlined in the *Handbook*. They offer no insight into the daily duties of the proffered position as those duties relate to the petitioner's provision of travel services. Only in response to the director's RFE does the petitioner add a duty that suggests the proffered position relates to the travel industry. However the petitioner does not detail how developing planning, coordinating

and conducting training programs for travel agents is a market research duty nor does the petitioner explain how this more particular duty encompasses the duties of a specialty occupation. The description provided is insufficient to enable the AAO to analyze and ultimately conclude that the daily duties of the proffered position encompass the duties of a market research analyst.

To reiterate, upon close review of the description provided, the petitioner has opted to describe aspects of a market research analyst occupation and a training occupation without providing a description of the specific duties as they directly relate to the petitioner's business. Here, the petitioner has not described how the individual in the proffered position will utilize the services of a market researcher in relation to its travel business, has not documented what the market researcher will actually do in the area of sales and marketing in the travel industry, and has not documented its expansion objective. The AAO is left with general information about a market research analyst occupation with no language or documentary evidence connecting the nonspecific duties of those occupations to the petitioner's business. The description does not focus on the specific requirements of this petitioner who has five employees and an undocumented claimed gross annual income of six million dollars.

The AAO declines to accept a broad overview of an occupation as definitive of a particular position's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise would require acceptance of any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS, however, must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation to its business and what the proffered position actually requires, in order to analyze and determine whether the duties of the position require a baccalaureate degree in a specialty. In this matter the petitioner has not provided such a description. It is not possible to identify the actual daily duties required of the position and, therefore, whether the position meets the statutory definition of a specialty occupation, that is employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation.

As a result, the AAO finds the petitioner has failed to establish that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO has examined the two job announcements the petitioner provided to establish the petitioner's degree requirement as the norm within its industry. However, the job announcements submitted do not show that the advertising businesses are similar to the petitioner in size, number of employees, or level of business, nor can the job descriptions provided by these listings be established as parallel to the nonspecific job description provided for the proffered position. Moreover, as the record does not establish the actual duties of the position as it relates to the petitioner's business, it precludes the petitioner from demonstrating that the proffered position is parallel to any degreed position within similar organizations in its industry. A review of

the totality of the job announcements, the job descriptions contained therein, and the type of organizational entities advertising the positions, does not demonstrate that the proffered position is parallel to positions offered by organizations similar to the petitioner, which require a bachelor's degree in a specific specialty. Further, without a meaningful job description, the petitioner may not distinguish the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion. The petitioner has not failed to establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Likewise, the petitioner's indication that it has an employee in the position of marketing executive does not establish that the proffered position is a specialty occupation. The record lacks information regarding the petitioner's current marketing executive's duties. Moreover, the record contains only a certificate of transfer reflecting that the individual in the position of marketing executive has obtained a three-year certificate from a foreign university. The AAO does not find a three-year degree as equivalent to a United States baccalaureate degree requiring four years of study. *See e.g. Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). Further, the record does not include documentary evidence, such as this individual's diploma, transcripts or other evidence establishing this employee's academic credentials. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Finally, absent a meaningful description of the proffered position's duties, the marketing executive's duties would not establish the proffered position as a specialty occupation.

The AAO notes the petitioner's desire to employ an individual with a bachelor's degree; however such a desire does not establish that the position is a specialty occupation. The critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. The AAO finds that the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Counsel's assertion on appeal that the proffered position should be considered a specialty occupation based on the complexity of the duties is not persuasive. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As determined above, the record does not contain a meaningful description of the duties of the proffered position; thus the petitioner cannot point to any particular generally described element of the description and contend that the position is so complex or specialized that it must be considered a specialty occupation. The record does not provide any evidence that the proffered position encompasses duties that are complex and specialized in regard to the petitioner's business. Without such evidence, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the totality of the evidence submitted in support of the petition, the petitioner failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The next issue in this matter is whether the petitioner established the beneficiary's eligibility to perform the duties of a specialty occupation. The director observed that the beneficiary had a foreign bachelor's of science degree in chemistry and a diploma in hotel management. The director also noted that the petitioner had provided an evaluation of the beneficiary's ten years of experience in business development, marketing, and related areas. The director determined that even with the beneficiary's combination of education and experience, the beneficiary did not have the specialized education that is required of a market research analyst.

Counsel does not address the director's determination on this issue on appeal; and the AAO finds no reason to disturb the director's denial of the petition on this ground.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.