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U.S. Citizenship
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Services

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02

OCT 31 2007

FILE: EAC 06 142 52645 Office: VERMONT 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, Chief
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 a wholesaler of fruits and vegetables and seeks to employ the beneficiary as a business 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 position did not qualify as a specialty occupation. On appeal, counsel submits a brief asserting that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered 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)(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:

[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 request for additional evidence; (3) the petitioner's response to the director's request for additional evidence; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a business analyst. Evidence of the beneficiary's duties was set forth in the Form I-129 petition and supporting documentation, and in the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Analyze and research market trends;
- Interpret data concerning expenditures, price, and future trends through daily reports;
- Conduct operations research to recommend improvements to operations;
- Compile information to keep informed on price trends, customer needs, and preferences; and
- Prepare analysis reports on market conditions.

According to the petitioner, 40 per cent of the beneficiary's time would involve analysis of the SUSTA – MAP Program, and would involve the following duties:

- Perform marketing activities such as: developing the web site, brochures, portfolio folders, promotional gift items, and ads on different magazines such as the Caribbean yellow pages;
- Be responsible for all trade shows, domestic and international shows;
- Perform international market research;
- Analyze sales through the Caribbean, Central America, and South America; and
- Analyze the following activities: international trade exhibitions, trade missions, reverse trade missions, trade seminars, menu and special event promotions, in-store promotions, showcases and

product presentations, trade relations and publicity campaigns, exporter education, industry market research, and matching funds for international marketing.

According to the petitioner, 30 per cent of the beneficiary's time would be spent analyzing government contracts:

- Submit weekly updated information on prices and market news to all food service directors and agents for the Miami Dade Schools and Palm Beach Schools; and
- Perform market research on improving healthy methods of nutrition for children.

The petitioner states that 30 per cent of the beneficiary's time would be dedicated to analysis of international sales and marketing:

- Analyze and give suggestions for improvement of sales through the Caribbean, Central America and South America;
- Generate sales analyses by regions, customers, and items;
- Analyze payment terms along with prices with all international customers;
- Analyze freight forwarders pricing and procedures to maximize productivity and profitability;
- Analyze joint ventures with other companies such as a Miami dairy company and a Boston tuna company; and
- Review market entry strategies and create brand image.

The petitioner finds the beneficiary qualified for the proffered position by virtue of her bachelor's degree in business administration from Florida International University.

The AAO routinely consults the 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 varied and include duties normally performed by advertising, marketing, promotions, public relations, and sales managers, as well as additional duties performed by general/operations managers. The director states that the offered position is that of a market research analyst. The AAO does not agree. While this position requires some market research, it is not a market research analyst position performing pure market research to be used in making corporate business decisions. The market research to be performed is the type normally performed by marketing managers and similar personnel in establishing marketing/promotional, advertising and sales campaigns. The beneficiary would use the research in determining product pricing, and in implementing marketing, sales and promotional campaigns.

The duties to be performed are not those normally performed by business analysts as stated by the petitioner, nor are they duties normally performed by management analysts, or operations-research analysts. The

Handbook states that management analysts are normally employed in the private sector as consultants, not employees of companies, and that most analysts/consultants contracted possess a master's degree in business administration or a related discipline. Firms providing management analysts range in size from a single practitioner to large international organizations employing thousands of consultants. Some analysts/consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business function, such as human resources, marketing, logistics, or information systems. The work to be performed will vary with each client and project. Likewise, the duties of the position are not normally performed by operations research analysts. Operations research and management science are terms that are used interchangeably to describe the discipline of applying advanced analytical techniques to help make better decisions and to solve problems. These analysts may be concerned with diverse issues such as top-level strategy, planning, forecasting, resource allocation, performance measurement, scheduling, the design of production facilities and systems, supply chain management, pricing, transportation and distribution, and the analysis of large databases. They work as consultants, and directly for operational divisions of private companies. The management duties to be performed by the beneficiary in this instance are those normally performed by general/operations managers within the petitioner's work environment. These managers plan, direct, or coordinate the operations of companies or public and private sector organizations. They formulate policies, manage daily operations, and plan the use of materials and human resources.

The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing, for marketing, sales, and promotion management positions. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice.

The *Handbook* further notes that the formal education and experience of general/operations managers varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into these management positions. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. In support of that assertion the petitioner submitted a letter from [REDACTED]. That letter, however, does not establish the petitioner's assertion. [REDACTED] states in her letter that she is president of a company with sales exceeding \$5,000,000 annually, and that she has recently hired a business analyst with a bachelor's degree in business administration. According to [REDACTED] that hire has improved her company overall and freed her to concentrate on the sales aspect of her company. The letter does not detail the duties performed by her business analyst, so it cannot be determined that the duties of the proffered position and those of Ms. [REDACTED] business analyst are similar. Further, the opinion offers no information about the use of business analysts with duties similar to those to be performed by the beneficiary in the industry as a whole to establish the educational requirements for similar positions in the industry. The submitted opinion is, therefore, of little evidentiary value. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner also submitted copies of seven job advertisements for business analyst positions to establish the above referenced assertion. None of the advertisements submitted, however, are from companies similar in nature and scope to that of the petitioner. Further, the advertisements do not establish an industry wide requirement of a baccalaureate level education in a specific specialty for the position of a business analyst. The advertisements submitted, though it has not been established that the advertised positions are for ones similar to that of the proffered position, accept degrees in the following disciplines: finance; marketing; information systems; business administration; hospitality; and computer science. One does not state that a college degree is required at all, and another requires a degree but does not state that the degree need be in any particular discipline. The petitioner has failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for entry into the position, and offers no evidence in this regard. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner states that the nature of the specific duties of the proffered position are so specialized or complex that knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty, and that the duties of the position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. In support of those assertions, the petitioner references prior CIS approvals for unrelated positions. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the referenced cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the present record is deemed insufficient to enable the AAO to determine whether the positions offered in the prior cases are substantially similar to the position in the instant petition. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no

such determination may be made without review of the original record in its entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Finally, as described by the petitioner, the enumerated tasks to be performed by the beneficiary appear to be regularly and routinely performed by advertising, marketing, promotions, public relations, and sales managers, as well as some additional duties performed by general/operations managers, who hold degrees in a wide range of unrelated educational disciplines. The record does not establish that the duties to be performed by the beneficiary are any more specialized, complex or unique than those normally performed in the industry by those holding unrelated bachelor's degrees. The duties of the proffered position, as set forth in the record, do not require a baccalaureate level education in a specific educational discipline that is closely related to the duties of the position. A wide range of unrelated educational disciplines will equip individuals to perform the duties of the position. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

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.

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