

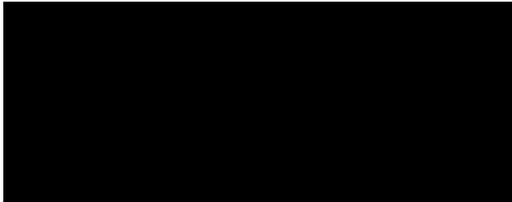
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U.S. Citizenship
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FILE: WAC 04 004 5404 Office: CALIFORNIA SERVICE CENTER Date: 2/27/05

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 materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a travel agency. It seeks to employ the beneficiary as a market research analyst and to classify him 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 ground that the proffered position did not 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.

As provided in 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) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In a letter accompanying Form I-129 the petitioner's president stated that his travel agency was established in 2000, had two employees in 2003, and wished to hire the beneficiary as a market research analyst for the purpose of "analyzing information on new projects and prospective clients, assisting in targeting and developing a greater market share of the discount airline passenger market for the petitioner." The petitioner asserted that a market research analyst required at least a baccalaureate degree, making it a specialty occupation, and that the beneficiary earned such a degree in India. In response to the RFE the petitioner's president submitted a more detailed description of the duties of the proffered position. They included the following:

- Study market trends in the travel industry, predict demand and report findings to management.
- Study factors influencing market trends in the industry, including such factors as holidays and festivals in various nations and regions, historic trends in the industry, the U.S. economy, as well as political, social, economic and climatic conditions in various travel destinations.
- Study consumer preferences regarding seasonal destinations.
- Study new forms of tourism, such as geotourism.
- Collect data from sources like previous sales records, customer feedback, the Travel Industry Association of America, travel websites, and surveys of the Office of Travel and Tourism Industries.
- Prepare a report for management to facilitate decision-making on markets, prices, advertising, and negotiating with airlines on procurement of advanced seating.

In his decision the director indicated that the duties described by the petitioner reflected the duties of a market research analyst, as listed in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. However, he was not persuaded that the proffered position should be classified as a market research analyst because such positions, according to the *Handbook*, are normally found in companies far larger than the petitioner and in different lines of business, such as research and management consulting firms, banks, securities and commodities brokers, as well as computer and data processing companies. The director found that the evidence failed to establish that the duties of a market research analyst are normal and customary requirements in small travel agencies like the petitioner. The actual duties to be performed, not the title of the position, determines whether it is a specialty occupation. Based on the foregoing factors, the director concluded that the subject position could be performed by an experienced individual with less than a baccalaureate degree. Hence, it was not a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

On appeal counsel contends that the director erred in denying the petition because the petitioner's industry is not listed in the *Handbook* as the type of business in which market research analysts normally are employed. The AAO agrees that the *Handbook's* listing is not exhaustive, though it does provide credible information about where market research analysts typically work. More importantly, the AAO agrees with the director that the evidence of record does not establish that the proffered position in this case is actually that of a market research analyst. The job description does not indicate that the beneficiary would be performing typical market research duties such as devising methods and procedures for obtaining needed data, designing surveys, and conducting them by telephone, over the Internet, or in person. *See Handbook*, 2004-05 edition, at 173. In the AAO's view, the proffered position more closely resembles that of a marketing manager, as described in the *Handbook, id.*, at page 23:

Marketing managers develop the firm's detailed marketing strategy. . . . [T]hey determine the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets – for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. . . . [T]hey monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising managers to promote the firm's products and services and to attract potential users.

As the *Handbook* clearly indicates, a baccalaureate or higher degree in a specific specialty is not the normal, industry-wide requirement for entry into a marketing manager position:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable.

Handbook, id., at page 24. Thus, a marketing manager does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate degree in a specific specialty is not the normal minimum requirement to enter into the particular position.

The proffered position does not meet the second alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). There is no evidence in the record that a degree requirement in a specific specialty is common to the travel industry in parallel positions among similar organizations. Nor has the petitioner demonstrated that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Rather, the scope and complexity of the position are in line with those of a typical marketing manager. Accordingly, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Since the proffered position is newly created the petitioner has no history of requiring a specialty degree or its equivalent. Accordingly, the position does not qualify as a specialty occupation under the third alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not show that the duties of the proffered position are so specialized and complex that they require knowledge at the level of a baccalaureate or higher degree. The evidence does not demonstrate that the knowledge required to perform the duties of the position exceed those of a typical marketing manager in their scope or complexity. Accordingly, the position does not qualify as a specialty occupation under the fourth alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the position proffered by the petitioner meets any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. Thus, the petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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