

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

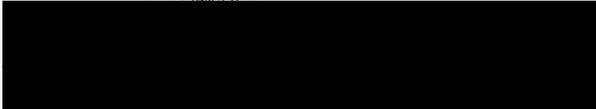


DI

FILE: LIN 04 052 53002 Office: NEBRASKA SERVICE CENTER

Date: MAY 10 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.

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 dismissed. The petition will be denied.

The petitioner is a retail/services company that seeks to employ the beneficiary as a market research analyst. The petitioner, therefore, 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 proposed position does not qualify as a specialty occupation. On appeal, counsel submits a brief.

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.

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 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 additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a market research analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail developing marketing campaigns, performing market research, and researching economic trends for short and long-term marketing decisions; researching marketing conditions in the local, regional, and international areas to determine the sales potential of products; and developing research methods to gather data on competitor's pricing and prevailing conditions, analyzing the research results, and preparing reports for management. The petitioner stated that the position requires a bachelor's degree in economics or the equivalent, fluency in the Russian language, and knowledge of Russian art, music, and culture.

The director determined that the proposed position is not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that it reveals that the proffered position's duties are analogous to those of a market research analyst. However, based on the *Handbook's* description of where this occupation is found, such as in large banks and worldwide pharmaceutical companies or smaller firms that specialize exclusively on marketing research, the director stated that the petitioner, a small retail/sales business and/or gift shop, would not be a likely employer of a market research analyst. The director stated that the *Handbook's* report that a bachelor's degree is normally the minimum requirement for entry into the position of market research analyst does not apply to a small employer like the petitioner, or to companies with the same business-focus as the petitioner. The director found the submitted job postings and H-1B approval for another similar position unpersuasive. The director determined that the petitioner did not have a past practice of hiring persons with a specific bachelor's degree and that the record did not establish that the beneficiary would perform sufficient H-1B-level duties.

On appeal, counsel contends that the director erroneously determined that the proffered position is not a specialty occupation. Counsel states that the petitioner plans to expand and this includes targeting Russian families in the United States. Counsel emphasizes that the director did not review the submitted evidence and overlooked the H-1B approval notice granted for a similar position with a small company. Counsel states that the submitted job postings, including the petitioner's posting, establish that the proposed position is a specialty occupation; and that a company that provides retail, marketing, travel agency services, educational exchanges, a gift shop, money transfers, and the retail of music equipment would require the services of a market research analyst to sustain the business and serve numerous customers. Counsel states that the petitioner services over two thousand Russian families in the United States. Counsel alleges that the director denied the petition due to prejudice and bias against the former Soviet Republic.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved another, similar petition in the past. The director correctly observed that the approval had been granted to Boston Medical Publishing Corporation, a medical book publisher, and that no evidence shows that the petitioner is similar in nature to this company. Furthermore, this record of proceeding does not contain all of the supporting evidence submitted to the Nebraska Service Center in the prior case. The complete Form I-129 petition is not in the instant record of proceeding. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the H-1B petition filed by Boston Medical Publishing Corporation is similar to the instant petition. Furthermore, 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).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. Factors often considered by CIS when determining these criteria include: whether the *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)).

In determining whether a position qualifies as a specialty occupation, the AAO 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 that the AAO considers. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations.

The *Handbook* indicates that the principle responsibility of a market research analyst is to conduct primary research by devising methods and procedures for obtaining data. The *Handbook* states that they:

often design telephone, mail, or Internet surveys to assess consumer preferences. Some surveys are conducted as personal interviews by going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers, under the market research analyst's direction, usually conduct the surveys.

The AAO does not agree with counsel's assertion that the beneficiary will occupy a market research analyst position as that occupation is described in the *Handbook*. The director correctly noted that the evidence submitted in response to the request for evidence included two job descriptions for a market research analyst, and that the document entitled "Exhibit I" does not relate to the instant petition because it is for a market research analyst employed by a dental practice. The document entitled "Exhibit II" relates to the petitioner. This document states that the beneficiary will "[d]evelop research methods to gather data on competitor[]"s

pricing and prevailing conditions,” but it does not indicate the percentage of time that the beneficiary will devote to this duty, or describe in detail the research methods that the beneficiary will use to gather data. As such, the AAO cannot conclude that the beneficiary will actually perform the duties of a market research analyst. The petitioner must describe what the job duties are in relation to its business. It must do more than simply recite the duties of the position from the *Handbook*. The petitioner has not provided sufficient detail to allow the AAO to perform a meaningful analysis of whether or not the beneficiary will be performing duties of a specialty occupation.

Because it has not established that the proffered position is one for which the entry-level requirement is normally a bachelor’s degree or its equivalent in specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner demonstrate that its specific degree requirement is common to the industry in parallel positions among similar organizations. The submitted job postings are not persuasive because they either do not describe the employers or the employers are dissimilar in nature from the petitioner. Synovate and the employer that Wendy Bluemling represents are not described in the posting; none of the employers shown in the document entitled “The Career Corner” are described in the postings. The following organizations differ in nature from the petitioner, which is a retail/services company with two employees: TargetRx, Inc., Perception Research Services, and The Link Group are marketing companies; Recruiter Academy represents a billion dollar corporation; Lisa Greenberg represents a pharmaceutical manufacturer; and Fortis Health is an insurance company. Thus, the petitioner fails to demonstrate that its specific degree requirement is common to the industry in parallel positions among similar organizations.

Nor is there evidence that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, in light of the *Handbook’s* information about a market research analyst and the lack of detail about the proposed position, the AAO cannot conclude that the beneficiary would actually occupy a market research analyst position.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner show that it normally requires a degree or its equivalent for the position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Because the proposed position lacks specificity, the AAO cannot conclude that the beneficiary will actually occupy a market research analyst position. Thus, the petitioner fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition on the ground that the proffered position is not a specialty occupation.

LIN 04 052 53002

Page 6

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.