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U.S. Citizenship  
and Immigration  
Services

FILE: WAC 04 121 52231 Office: CALIFORNIA SERVICE CENTER Date **JUL 26 2006**

IN RE: [REDACTED]  
Petitioner:  
Beneficiary:

PETITION: Petition for a nonimmigrant worker pursuant to Section 101(a)(15)(H)(i)(b) of  
the Immigration and Nationality Act, & U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:  
[REDACTED]

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.

*for Michael F. Wiemann*  
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 freight forwarding logistics company that seeks to employ the beneficiary as a market research analyst and to classify her 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 basis that the petitioner did not establish that the proposed position is a specialty occupation. On July 8, 2004 counsel submitted a timely Form I-290B and indicated that she would send a brief and/or additional evidence to the AAO within 30 days. As of this date, the AAO has not received a brief or any additional evidence. Therefore, the record is complete.

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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 with supporting documents; (2) the director's denial letter; and (3) Form I-290B with additional documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner lists the proposed position as a market research analyst. Evidence of the beneficiary's duties includes the Form I-129 with accompanying employer support letter and the response to the RFE. The petitioner stated that the beneficiary's duties would entail, in part: collecting and analyzing data on customer demographics, preferences, needs, and buying habits to identify potential markets and factors affecting product demand; conducting research on customers' opinions and marketing strategies; collaborating with marketing professionals, statisticians, pollsters, and other professionals; developing and implementing procedures for identifying advertising needs; devising and evaluating methods and procedures for collecting data (such as surveys, opinion polls, or questionnaires), or arranging to obtain existing data; forecasting and tracking marketing and sales trends, analyzing collected data; gathering data on competitors and analyzing their prices, sales, and methods of marketing and distribution; measuring and assessing customer and employee satisfaction; measuring the effectiveness of marketing, advertising, and communications programs and strategies; monitoring industry statistics and following trends in trade literature; preparing reports of findings, illustrating data graphically and translating complex findings into written text; and analyzing and suggesting ways to increase the efficiency of the advanced interface systems. The petitioner stated that it required at least a bachelor's degree in business administration or marketing for the position.

The director found that the proposed duties went beyond what is normally required of market research analysts by requiring the beneficiary to act on the data she gathered, rather than just gathering the data and allowing the petitioner's management team to act on it. The director also found that the petitioner failed to establish that it was engaged in the type of business that typically required a full- or part-time market research analyst.

On appeal, counsel asserts that the director erred in questioning the petitioner's business necessity for a market research analyst. Counsel asserts that not only marketing research firms require market research analysts, but also businesses that operate domestically and internationally, like the petitioner's. Counsel asserts that the director failed to consider all the duties of the proposed position in determining whether it was a specialty occupation.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has not established that the proposed position meets any of the criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

As an initial matter, the AAO finds the director to have erred in concluding that the petitioner is not engaged in the type of business that would require a market research analyst. In that the *Handbook* indicates that the work of marketing research analysts is concerned with the potential sales of products or services and that they provide a company's management with information needed to make decisions on the promotion, distribution, design and pricing of products or services, market research is applicable to a broad range of industries and businesses seeking to improve their market share and profits. The fact that the petitioner is a freight forwarding logistics company engaged in shipping for businesses in the U.S. and their partners in the Pacific Rim, does not preclude it from engaging in the type of market research activities described by the *Handbook* as a means of increasing its business opportunities and earnings. Accordingly, the AAO withdraws the director's finding in this regard.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title, but reviews the specific duties of the proposed position, combined with the nature of the petitioning entity's business operations. 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 (5<sup>th</sup> 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 bachelor's or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. Based on a thorough review of the evidence of record and the *Handbook*, the AAO finds that, as described by the petitioner, the duties of the proposed position are general and lack specificity. The petitioner does not explain with any detail the beneficiary's duties of "conducting research on customer's opinions and marketing strategies" and "collaborating with marketing professionals, statisticians, pollsters, and other professionals" in the context of its freight forwarding logistics company. Furthermore, the petitioner does not identify the research to be done with any specificity. The petitioner does not describe the analytical techniques to be used by the beneficiary in performing the job duties. On appeal, counsel asserts that market research analyst positions are specialty occupations, but counsel does not offer any further details regarding how the beneficiary is expected to analyze the petitioner's freight forwarding operations.

Without more useful documentation of the day-to-day services the beneficiary is expected to provide the petitioner, the AAO cannot analyze whether the beneficiary will be performing the duties of a market research analyst or any other occupation. Thus, the petitioner has failed to establish that the position is one that qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1), a bachelor's or higher degree or its equivalent, in a specific field of study is normally the minimum requirement for entry into the particular position.

Next, the AAO turns next to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). As already discussed, the information about the proposed duties is too general to align the position with any occupation for which the *Handbook* reports employers normally require at least a bachelor's degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires at least a bachelor's degree or its equivalent in a specific field of study for the position - is not a factor in this proceeding as the petitioner asserts that this is a new position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish 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 bachelor's or higher degree. As discussed above, the proposed position is described in general terms and the record lacks sufficient evidence that would establish that the nature of the proposed duties is specialized and complex, requiring a bachelor's degree in a specific field such as marketing. Consequently, the petitioner fails to demonstrate that the proposed position is a specialty occupation based on the complexity or specialized nature of its duties.

The burden of proving eligibility for the benefit sought remains entirely 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.