

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

b1

PUBLIC COPY

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 30 2006  
WAC 97 196 51043

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:

[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.

*Robert P. Wiemann*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** In October 1997, the service center director denied the Form I-129 nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and the petitioner filed a motion to reconsider. On February 11, 2004, the AAO remanded the matter to the director for entry of a new decision. The director again denied the petition and the petitioner appealed. On April 5, 2005, the AAO dismissed the appeal and again denied the petition. A motion to reopen or reconsider is now before the AAO. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a corporation engaged in limousine transportation services, with 21 employees at the time of filing. It seeks to employ the beneficiary as a Japanese market research analyst, Level 1, 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 based on his determination that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's initial denial of the petition; (3) the Form I-290B, with a letter from prior counsel and additional evidence; (4) the AAO's dismissal of the appeal; (5) the petitioner's initial motion to reconsider; (6) the AAO's remand to the director; (7) the director's second denial of the petition; (8) the AAO's dismissal of the appeal; and (9) the petitioner's motion to reopen/reconsider, with current counsel's brief and additional evidence. The AAO reviewed the record in its entirety.

Pursuant to the regulation at 8 C.F.R. §§ 103.5(a)(3):

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel's brief contends that the petitioner has established the proffered position as a specialty occupation under three of the four alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). He asserts that the beneficiary's duties, as described at the time of filing, are those of a market research analyst and, as such, demonstrate that the proffered position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. He submits evidence related to two previously cited unpublished AAO decisions involving a Hispanic market research associate and a market research analyst for an import/export firm as proof that the proffered position satisfies both the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree<sup>1</sup> and the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – the nature of the specific

---

<sup>1</sup> The AAO notes that counsel actually contends that the complex nature of the proffered position establishes it as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). In that the third criterion requires proof of the petitioner's hiring practices, not job complexity, to establish the proffered position as a specialty occupation, the AAO assumes that counsel intended to reference the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

Based on its review of the record, the AAO finds the petitioner to have satisfied the requirements at 8 C.F.R. § 103.5(a)(3) and will reconsider those aspects of its prior decision that relate to the issues raised by counsel. The AAO turns first to counsel's contention that the duties of the proffered position are those of a market research analyst.

In its April 5, 2005 dismissal of the second appeal, the AAO found the duties of the proffered position to combine the duties of a marketing/public relations specialist, a marketing/sales manager, and a translator, employment that does not normally require a minimum of a baccalaureate degree or the equivalent in a specific specialty. On motion, counsel contends that the description of the proffered position's duties reflects the employment of market research analysts, as discussed in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition. He asserts that the *Handbook* passage on the employment of market research analysts quoted in the AAO's April 5, 2005 decision identifies duties "substantially similar" to those of the proffered position. Counsel also concludes that, as the *Handbook* "clearly contemplates a minimum requirement of a bachelor's degree for market research analyst positions," the proffered position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Counsel's characterization of the evidence provided by the *Handbook* is not persuasive.

The similarities between the petitioner's description of the proffered position and the *Handbook's* discussion of the occupation of market research analysts do not establish the position as a market research analyst. While the AAO agrees that one of the duties listed by the petitioner would require the beneficiary to research and analyze trends and changes in the transportation services and other related markets, the record does not demonstrate that this responsibility would entail the type of market research analysis discussed by the 2006-2007 edition of the *Handbook* under the occupational title of market and survey researchers. The petitioner's generalized description of the beneficiary's research and analysis duties states only that she would perform such duties. The petitioner does not indicate that these duties would involve the "gathering of statistical data on competitors and examining prices, sales, and methods of marketing and distribution,"<sup>2</sup> that the beneficiary would be required to "analyze data on past sales to predict future sales" or that she would "devise methods and procedures" for conducting her research, all characteristics of the employment of market research analysts. [*Handbook*, page 175]. In that the *Handbook* [page 176] reports that "[m]uch of the market . . . researcher's time is spent on precise data analysis," the AAO finds the absence of any mention of data analysis in the petitioner's description of the proffered position's duties to undermine counsel's claims regarding the nature of the position. Moreover, the AAO notes the statements made by the petitioner's president in support of its 1997 appeal of the director's initial denial of the instant petition, which indicate that

---

<sup>2</sup> The AAO notes that the beneficiary would be responsible for gathering information on "services, price schedules and other information" in relation to companies that can "offer value-added services to [the petitioner's] current clients and potential business prospects." However, gathering information on price schedules, as described, does not constitute data analysis performed by market research analysts in relation to prices, sales and methods of marketing and distribution.

in employing the beneficiary the petitioner “can outsource the data analysis” related to its market research needs. Therefore, despite counsel’s assertions of the similarities between the proffered position and the *Handbook*’s description of market research analysts, the duties of the proffered position do not reflect the employment of market and survey researchers.

Instead, the beneficiary’s responsibility for researching companies, and market trends and changes, when considered in light of the full range of her proposed duties, appears more closely related to the type of information gathered by marketing and sales managers seeking to expand the market share of the companies for which they work. Such individuals estimate the demand for products and services offered by their company and its competitors, identify potential markets, develop pricing strategies, monitor trends in products and services, and analyze sales statistics to determine sales potential and monitor customer preferences. [*Handbook*, pages 27-28.]. Therefore, the AAO again concludes that the proffered position is most closely aligned to the occupation of advertising, marketing, promotions, public relations and sales managers, employment that the *Handbook* indicates does not impose a degree requirement on individuals seeking entry-level employment. [*Handbook*, page 28].

The AAO now turns to the issue of whether a market research analyst is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Counsel, on motion, asserts that the *Handbook*’s reporting of a degree requirement for employment as a market research establishes the profession as a specialty occupation.

The AAO agrees that the *Handbook* reports that employers seeking market research analysts require job candidates to hold the minimum of a baccalaureate degree. It notes, however, that *Handbook* fails to indicate that the degree held must be in a field directly related to market research, as required for classification as a specialty occupation. [*Handbook*, page 176]. When a job, like that of market research analyst may be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Accordingly, the degree required for employment as a market research analyst does not establish the profession as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

As previously noted, counsel’s motion also contends that the proffered position may be established as a specialty occupation based on its complexity or the specialized and complex nature of its duties under the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4) respectively. To support his claim, counsel submits material summarizing two unpublished AAO decisions, one related to the position of an Hispanic market research associate (LIN 92 257 51102) and the other to a market research analyst for an import/export firm (EAC 94 214 50527).<sup>3</sup> He contends that while such decisions are not binding on CIS employees, the AAO should consider them since “the duties of the positions described in the AAO decisions cited were substantially similar to [the] Beneficiary’s proposed duties, because the AAO found those positions to be

<sup>3</sup> *H-1B Handbook* by [REDACTED] Unknown Edition, Chapter 6, pages 25-26.

specialty occupations, and because the interests of consistency and fairness dictate that these unpublished decisions be given weight.”

Having reviewed the additional material submitted by counsel, the AAO continues to find the two unpublished AAO decisions cited by counsel to be unpersuasive. The proffered position is not that of a market research analyst. Therefore, prior AAO decisions related to market research analyst and associate positions are of little evidentiary value for the purposes of this proceeding. Further, although counsel asserts that the duties of the positions in the cited cases are “substantially similar” to those of the proffered position, the case synopses he provides do not support his claims. While the brief descriptions provided by the synopses would, in any case, be insufficient to establish the facts of these decisions as substantially similar to those in the instant case, the limited job descriptions they offer outline duties dissimilar to those listed by the petitioner. Moreover, 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). Accordingly, the synopses of the two AAO unpublished decisions also fail to establish the proffered position as a specialty occupation.

For the reasons previously discussed, the petitioner has not established that the proffered position qualifies as a specialty occupation. Accordingly, the AAO will affirm its prior 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 decision of the AAO is affirmed. The petition is denied.