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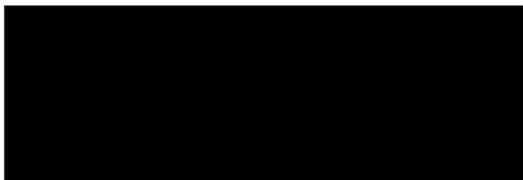
U.S. Department of Homeland Security
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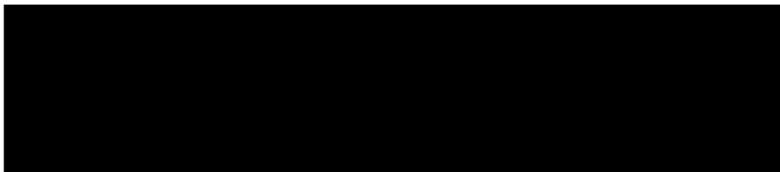
FILE: LIN 06 057 50948 Office: NEBRASKA SERVICE CENTER Date: **JUL 31 2007**

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.

for *Michael T. Kelly*
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 sustained. The petition will be approved.

The petitioner is a consulting company focusing on disease management and evaluation strategies to determine disease prevention program effectiveness. It seeks to employ the beneficiary as a market research analyst and endeavors 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, stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first 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; (4) the director’s denial letter; and (5) the Form I-290B with counsel’s brief. 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 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Collect and analyze data on consumer demographics;
- Collect and analyze data on customer preferences and needs;
- Conduct and analyze data on customer buying habits;
- Collect and identify data to identify potential markets and factors affecting product market demand for disease management consulting services;
- Prepare concise reports for the principal of the Linden Group to illustrate market data and translate complex findings into strategic marketing plans and goals;
- Forecast and track marketing issues and consulting trends within the disease management consulting marketplace;
- Conduct research on marketing strategies for disease management consulting services;
- Provide the petitioner with information and proposals concerning how to promote the petitioner’s business and how to properly price the petitioner’s consulting services to increase market share;

- Gather data on competitors within the disease management consulting sector and analyze their services, price and marketing methods;
- Monitor disease management sector statistics and trends and work to identify market opportunities for the petitioner;
- Use database software, geographic information systems marketing software and focus software to assist in market analysis research and to generate marketing plans and strategies;
- Use knowledge of marketing and marketing analysis principles to promote the petitioner's consulting services and grow the business;
- Use market statistics and business and management principles to assist in strategic market planning to grow the petitioner's business;
- Use critical thinking to identify patterns in market statistics and trends, develop and create marketing approaches for the petitioner;
- Record and track information within the disease management consulting sector;
- Update and revise market knowledge through market analysis and observe changes and trends in the industry relevant to market analysis and marketing of consulting services; and
- Analyze market research information and recommend the best marketing solution to grow the petitioner's business.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. 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 appear to be those noted for market and survey researchers. The *Handbook* notes that market research analysts are concerned with the potential sales of a product or service. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales. They devise methods and procedures for obtaining the data they need. Like market research analysts, survey researchers design and conduct surveys for a variety of clients, such as corporations, government agencies, political candidates, and providers of various services. The surveys collect information that is used for performing research, making fiscal or policy decisions, or improving customer satisfaction. They may also conduct opinion research to determine public attitudes on various issues. The *Handbook* notes that a bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree may be required for more technical positions. In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record does, however, establish that the duties of the proffered position are so specialized and complex that

knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The duties of the offered position concern market research relative to the marketing of a highly technical consulting business which focuses on disease management and evaluation strategies to determine disease prevention program effectiveness for institutional clients. The petitioner assists institutional clients in examining treatment populations and assessing the efficacy and cost-effectiveness of treatment programs for management of a broad range of disease and health factors. The petitioner provides a third-party review that allows client organizations to assess operational processes, clinical quality improvement initiatives, medical and disease management strategies, and establish the most beneficial cost-effective alternatives. The duties to be performed by the beneficiary are unique, specialized and complex in that they require theoretical and practical knowledge of marketing, project management, business planning and strategic planning in order to perform market research analysis in an ever changing health care management industry where disease management and prevention programs are constantly altered by scientific innovation and discovery. The fast changing nature of the industry adds additional complexity to researching markets for the petitioner's services because scientific innovation and change necessarily lead to rapid change in the institutions making use of medical advancements. In order for the beneficiary to adequately perform these duties in the petitioner's business environment, she must have a knowledge of business and marketing in a science and technology field. The petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of the proffered position. The director did not comment on this issue as the petition was denied on another ground. The record, however, is sufficient for the AAO to make that determination. The beneficiary holds a Master of Science in Management in Science and Technology degree from the Oregon Health & Science University, a regionally accredited university located in Portland, OR. As noted in the *Handbook*, master's degrees may be required for technical positions, and increase opportunities for advancement to more responsible positions. Advanced degrees may be earned by market and survey researchers in business administration, marketing, statistics, communications, or some closely related discipline. The degree held by the beneficiary is closely related to the requirements of the proffered position, and the beneficiary is qualified to perform those duties. 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.