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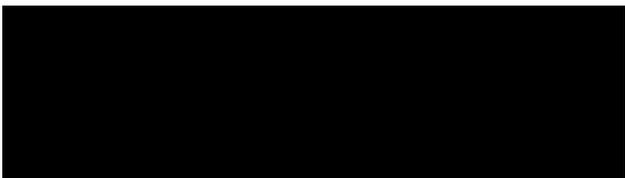
U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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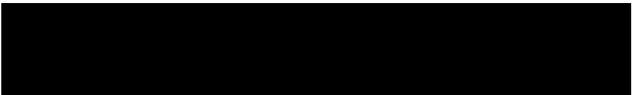
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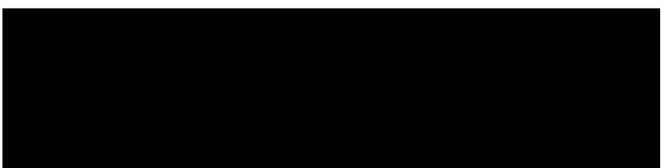
Date: APR 06 2005

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 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 The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is a manufacturer, importer, and exporter of video and audio recording media. It 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 ground that the record did not establish that the proffered position qualified 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 additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, the appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, which describes itself as a wholesale and retail blank recording media company, was established in 1993 and had five employees with gross annual revenue of \$800,000 at the time the instant petition was filed in November 2002. On Form I-129 the petitioner stated that it was seeking to hire the beneficiary as a market research analyst for the purpose of “designing web-based, print and electronic media marketing [in the United States] and overseas, as well as analyzing databases, designing ads and analyzing results.” In a letter responding to the RFE, the petitioner listed the duties of the proffered position and the percentage of time the beneficiary would spend on each as follows:

1. Gathering data on domestic competitors to analyze prices, sales, and methods of marketing and distribution – 12%
2. Gathering data on international market conditions, focusing on the Far East to analyze data, prepare reports, and distribute to staff – 6%
3. Review research methodology and identify necessary adjustments. Design marketing campaign based on regional preferences and buying habits. Identify consequences of present inventory choices. Cost evaluation. Apply conjoint analysis to determine which attributes of a product determine preference levels – 12%
4. Design telephone interview surveys to assess consumer preferences for Asian market (Japan, Taiwan, Singapore, China, and Hong Kong) – 10%
5. Devise methods and procedures for obtaining data regarding knowledge, attitude, behavior, practices of target markets in the U.S. and in the Far East – 5%
6. Conduct opinion research to determine consumer attitudes and preferences on new products and services – 7%
7. Analyze statistical data on past sales to predict future sales – 12%
8. Evaluate data to make recommendations to [the petitioner’s] president based upon findings. Provide management with information needed to make decisions on promotion, distribution, design, and pricing of product – 13%
9. Create models to estimate the size of markets for particular products or combinations of products – 3%
10. Analyze data, prepare report, distribute to staff – 20%

The petitioner asserted that the foregoing tasks required the expertise of an individual with a baccalaureate degree and marketing experience. The beneficiary earned a bachelor of arts, majoring in Asian history, from the School of Literature at Waseda University in Japan on March 15, 1996. According to the petitioner she also has six years of training and work experience in marketing.

The director determined that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). With reference to the description of market research analysts in the Department of Labor (DOL)’s *Occupational Outlook Handbook (Handbook)*, the director noted that the petitioner’s business was not similar in scope to the types of companies that typically employ a market research analyst. The duties of the proffered position, the director continued, appeared to be more indicative of a sales position, which does not require a baccalaureate degree in a specific specialty. The evidence in the file of other companies similar to the petitioner employing a market research analyst was unconvincing, the director stated, and the record indicated that the petitioner had not previously employed an individual with a specialty degree in the position. Nor did the record establish that the duties of the position were so specialized and complex that they could only be

performed by an individual with knowledge at the level of a baccalaureate degree in marketing or a closely related field.

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*, 712 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 asserts that the proffered position meets all four criteria of a specialty occupation. Counsel contends that the duties of the position fit the *Handbook's* description of a market research analyst, an occupation which requires at minimum a bachelor's degree in business administration, economics, statistics, marketing, or the like, and therefore qualifies as a specialty occupation. The *Handbook's* description of the occupation reads as follows:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Market research analysts devise methods and procedures for obtaining the data they need. 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.

After compiling the data, market research analysts evaluate it and make recommendations to their client or employer based upon their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Market research analysts might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

Handbook, 2004-05 edition, at 173. The AAO agrees with counsel, based on the petitioner's detailed description of the job duties and other documentation in the file, that the proffered position accords with the *Handbook's* description of a market research analyst.

With respect to the educational requirements for market research analysts, the *Handbook* states the following:

A master's degree is the minimum requirement for many private sector market and survey research jobs, and for advancement to more responsible positions. Market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or marketing research firms prior to graduation.

. . . Bachelor's degree holders who majored in marketing and related fields may qualify for many entry-level positions that might or might not be related to market and survey research. These positions include research assistant, administrative or management trainee, marketing interviewer, and salesperson, among others.

Handbook, id., at 174. Based on the foregoing language, the AAO has held that market research analysts are a specialty occupation requiring a master's degree in business administration, marketing, statistics, communications, or a related specialty for entry into a private sector position. Thus, the petitioner has overcome the director's ruling that the proffered position is not a specialty occupation.

The petition may not be approved, however, as the beneficiary does not appear qualified to perform the services of the specialty occupation. Because this issue has not been addressed by the director, the petition must be remanded for a ruling on the beneficiary's qualifications to perform the services of a market research analyst. As set forth in 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform the services of a specialty occupation an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary, as indicated earlier, has a bachelor of arts, majoring in Asian history, from the School of Literature at Waseda University in Japan. According to a credentials evaluation report of Morningside Evaluations and Consulting in New York (Morningside report), the beneficiary's educational studies combined with her work experience in marketing and related areas are equivalent to a bachelor of arts in marketing from an accredited U.S. college or university. In counsel's view that degree equivalent qualifies the beneficiary under the fourth criterion to perform the services of a market research analyst.

Consistent with the information in the *Handbook*, however, the AAO determines that a market research analyst position in the private sector requires a master's degree in a specific job-related specialty. While a bachelor's degree in marketing or a related field, according to the *Handbook*, may be sufficient for an entry-level position such as a research assistant, administrative or management trainee, marketing interviewer, or salesperson, the duties of the proffered position in this case are at a higher level and require greater expertise. Even if the proffered position were one of the types described in the *Handbook* as requiring only a baccalaureate degree, the beneficiary would not qualify based on her degree alone because it is not in marketing or a related field, but rather in literature and Asian history, neither of which is directly related to the proffered position. Thus, the beneficiary in this case must establish that she has a combination of education, specialized training, and/or progressively responsible experience equivalent to a master's degree from a U.S. university in a job-related specialty such as business administration, marketing, statistics, or communications to be qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform the services of a market research analyst.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(D), whether the beneficiary's education, specialized training and/or experience is equivalent to a master's degree from a U.S. university shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced

by at least one type of documentation such as: (i) Recognition of expertise in the specialty occupation by at least two recognized authorities¹ in the same specialty occupation; (ii) Membership in a recognized foreign or United States association or society in the specialty occupation; (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers; (iv) Licensure or registration to practice the specialty occupation in a foreign country; or (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

With respect to the first criterion, 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the Morningside report does not demonstrate that its author has the authority to grant college-level credit for training and/or experience in the specialty and that his college or university has a program for granting academic credit based on an individual's training and/or work experience. A credentials evaluation service, as specified in 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), may only evaluate an individual's education. Furthermore, the Morningside report does not establish that the beneficiary has training or experience in the specialty which is equivalent to a master's degree from a U.S. university. The report states only that the beneficiary has the equivalent of a bachelor's degree in marketing from a U.S. college or university.

The second criterion, 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), is inapplicable in this case.

As for the third criterion, 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the AAO accepts the Morningside report insofar as it establishes that the beneficiary's education is equivalent to a bachelor's degree in liberal arts from an accredited college or university in the United States. That degree equivalent, however, is not in a specific specialty directly related to the proffered position of market research analyst.

As for the fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), the record indicates that the beneficiary is a member of the Marketing Research Association (MRA), a national trade association of 2,800 members claiming to "represent all segments of the research industry." The MRA letter in the file that confirms the beneficiary's membership explicitly states, however, that "MRA does not currently have a certification program for opinion and marketing research competency" and that members of the association "cannot claim that [membership] automatically conveys a message of their competency." Thus the MRA letter does not constitute evidence of the beneficiary's certification or registration as a market research analyst from a nationally-recognized professional association.

As for the fifth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the record does not indicate that the beneficiary has a combination of education, specialized training, and/or work experience in areas related to the specialty which is equivalent to a master's degree in the specialty. Even if CIS were to consider the Morningside report as reliable evidence that the beneficiary has the equivalent of a bachelor's degree in marketing, that evaluation took into consideration the beneficiary's six years of employment experience in marketing. To have the equivalent of a master's degree, however, the beneficiary would need another

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

five years of experience in the field, which she did not have at the time the instant H-1B petition was filed. Thus, it appears that the beneficiary will not be able to establish that she has a degree-equivalent combination of education and experience in the specialty occupation of market research analyst.

The beneficiary claims to have six years of employment in the field of marketing, including three years (1993-96) as marketing director and administrative and teaching assistant at Jet Japanese language school in Tokyo, Japan, and three years (1996-99) as marketing manager and program developer at Videoland Inc., a television broadcasting company in Taipei, Taiwan. The petitioner has submitted no corroborating evidence of the beneficiary's employment at the Japanese language school from 1993 to 1996. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Treasure Craft of California*, 14 I&N 190, 193-94 (Reg. Comm. 1972). The record does include a letter from the director of Videoland Sports Channel, Tony Lin, stating that the beneficiary was employed by Videoland Inc. from 1996 to 1999 as marketing manager and program developer and was partly responsible for the company's growth during those years. Even if the beneficiary's experience at Videoland, Inc. could be considered as the theoretical and practical application of specialized knowledge required by the specialty occupation, there is no documentation in the record that such experience was gained while working with peers, supervisors, or subordinates with a degree or its equivalent in the specialty occupation, or that the beneficiary has recognition of expertise in the specialty in any of the five forms of documentation enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Thus, the letter from Mr. Lin is not persuasive evidence that the beneficiary's employment at Videoland Inc. constitutes three years of employment in an area related to the specialty of market research analyst or that she has achieved recognition of expertise in that specialty occupation. Based on the current record, the beneficiary does not have any work experience which can be counted toward the equivalent of a marketing degree in the United States.

For the reasons discussed above, the record does not establish that the beneficiary's education, training, and work experience is the equivalent of a master's degree, or a bachelor's degree, in the specialty occupation of market research analyst under any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D). Based on the current record, the beneficiary is not qualified, under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), to perform the services of a market research analyst.

Since the director did not address the issue of the beneficiary's qualifications in his decision, the petition will be remanded for a determination as to whether the beneficiary is qualified to perform the services of the specialty occupation. The director must afford the petitioner reasonable time to provide pertinent evidence. The director shall then issue a new decision based on the evidence of record relating to the requirements for eligibility. As always, the burden of proof rests with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of June 2, 2003 is withdrawn. The petition is remanded to the director for entry of a new decision. If the decision is adverse to the petitioner, it shall be certified to the AAO for review.