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U.S. Citizenship
and Immigration
Services

DI



FILE: WAC 04 052 50405 Office: CALIFORNIA SERVICE CENTER Date: MAY 17 2005

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:



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

Cc: [Redacted]

www.uscis.gov

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 cellular phone repair service that seeks to employ the beneficiary as a market 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 analyzing the target market in order to determine business potential and tailor cellular phone sales and repair service to it; developing research methodology and designing format for data gathering using methods such as surveys and statistical data gathering in order to obtain market information and determine demand; performing market analysis, including demographic research on the sale of cellular phones and repair service, and evaluating statistical reports and economic reviews; considering micro and macro based issues; performing market segmentation and designing questionnaires to determine each market's demand; conducting interviews to determine factors that influence customers' buying habits, tastes, and preferences; analyzing past and present market trends and forecasting market trends; preparing comparative analysis to illustrate the demand for different types of cellular phones and repair services; preparing graphic illustrations to show future market needs, the emergence of new products and technology, and the internet's role in marketing; monitoring marketing trends and developments; studying competitors and analyzing their marketing strategies, pricing, sales, and promotions; participating in wireless communication industry associations and attending major events about cellular phones and telecommunications; devising flow charts and statistical diagrams to illustrate competition in the market; and formulating marketing plans. In the December 6, 2003 letter the petitioner stated that the proposed position requires a "degree in economics, marketing, or business administration."

The director concluded that the proposed position is not a specialty occupation. The director stated that although the proposed position seems to be performed by market research analysts as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), he was not convinced that the beneficiary would occupy such a position. Sole reliance on duties resembling those of a market research analyst taken from the *Handbook* and the *Dictionary of Occupational Titles (DOT)* to establish the proposed position qualifies as a specialty occupation is misplaced, the director stated. In determining whether a position is a specialty occupation, the director stated that the position is evaluated on the nature and complexity of its job duties; that incidental duties that are specialized are insufficient to qualify a position as a specialty occupation; and that the *Handbook's* description of a market research analyst does not include the duty to act upon data, which is the function of a client or management. Based on the *Handbook's* description of the types of companies that employ market research analysts, the director determined that the petitioner is not a likely employer of a full or part-time market research analyst. The director stated that the petitioner's business does not extend beyond the local community; that it lacks organizational complexity to require a market research analyst; and that advertising, marketing, and sales duties, which are not specialty occupation duties, are part of the proposed position. The director stated that although the beneficiary's degree is in a related field, this does not guarantee that a position is a specialty occupation.

On appeal, counsel states that the petitioner does not rely on the *Handbook*, the *DOT*, or the beneficiary's education to determine its needs; that it is cost effective and beneficial to employ a part-time market research analyst; and that the petitioner's survey shows that employing a market research analyst is common in the private sector. Counsel states that the beneficiary's duties are ongoing, and that they are different from a marketing officer's duties. Counsel emphasizes that the organizational chart and employee list demonstrate that the petitioner has a marketing department comprised of a marketing officer and three salespeople, and that they and management will act upon the beneficiary's information. Counsel asserts that the petitioner seeks to expand its operations, which includes using the Internet, to maximize its profitability and marketability.

In the December 6, 2003 letter the petitioner asserts that the proposed position requires a "degree in economics, marketing, or business administration." The petitioner's educational requirement is not enough to establish that the proposed position qualifies as a specialty occupation. As stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

The record reflects that among other degrees, the petitioner accepts a baccalaureate degree of generalized title, business administration, without indicating further specification. As discussed in *Matter of Michael Hertz Assocs.*, this educational requirement does not establish that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): (1) that a baccalaureate or higher degree or its equivalent *in a specific specialty* is the normal minimum requirement for entry into the particular position; (2) that a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; (3) that the petitioner establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position; or (4) it does not 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.

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

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.