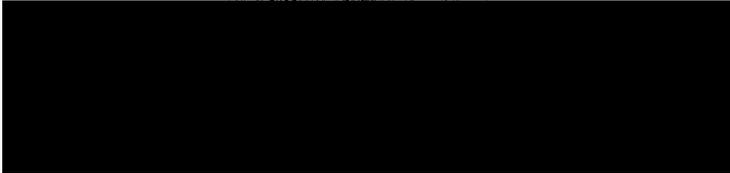


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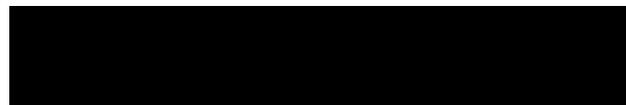
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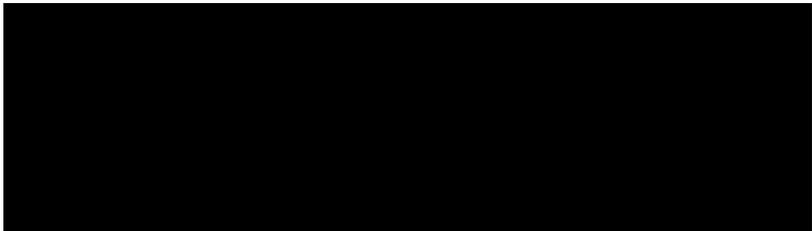
FILE: WAC 03 243 50199 Office: CALIFORNIA SERVICE CENTER Date: DEC 02 2005

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 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, Director
Administrative Appeals Office

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 engaged in the business of selling aircraft equipment in Taiwan, declares seven employees and a gross annual income of \$2,852,225, and seeks to employ the beneficiary as a market research analyst. The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel files a brief.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in 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 petitioner is seeking the beneficiary's services as a market research analyst. The petitioner indicated in its letter of support of the initial petition that the duties of the position require the services of an individual who possesses at least a bachelor's degree in business administration, economics, marketing or its equivalent. The petitioner submitted a copy of the beneficiary's degree, a bachelor's of science in hotel administration from a university in the United States.

The director issued a request for evidence demonstrating that the beneficiary has education, specialized training and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation. The director noted that the beneficiary did not have a degree as required by the specialty. The director noted that the petitioner must show that the beneficiary has recognition of expertise in the specialty through progressively responsible experience.

The petitioner claimed that the beneficiary qualifies for the proffered position because of her education and work experience. In its response, the petitioner asserted that the beneficiary had gained experience by working for Global New Arts Corporation as a part-time market research analyst. The petitioner claimed that it submitted an experience verification letter from the marketing manager of Global New Arts Corporation and an experience letter from the marketing manager of the petitioner. The director stated that the petitioner did not submit any prior employment verification letters. The director noted that the petitioner's claims of prior work experience by the beneficiary were not substantiated with evidence. The director noted that the beneficiary does not have a degree required by the specialty and referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) which reveals the following about the training and education needed for the positions of economic and market and survey researchers: "[g]raduate education is required for many private sector economist and market survey research jobs, and for advancement to more responsible positions." The director found that since the beneficiary does not possess a graduate degree in the field the petitioner has not established that the beneficiary is qualified for the specialty occupation.

On appeal, counsel asserts that the director misinterpreted the facts presented by the petitioner and that the director should not rely on the information in the *Handbook* when making his decision. On appeal, counsel refers to the employment verification letters as describing the beneficiary's duties as a market research analyst. Counsel asserts that the *Handbook* provides that a bachelor's degree will usually qualify an applicant for most entry-level positions. Counsel states, "the *Handbook* does not specify a specific major for entry into the marketing occupation. Rather the *Handbook* indicates that people with [sic] usually qualify for most entry-level positions as a research assistant, administrative or management trainee, marketing interviewer, or any number of professional sales jobs." The petitioner asserts that the beneficiary has a bachelor's degree; the proffered position is an entry-level position; and the petitioner requires a bachelor's degree in business administration or any business related major. Counsel concludes that the beneficiary is qualified for the position

Upon review of the record, the AAO has not found copies of the employment verification letters referred to by counsel which are the basis of counsel's assertions that the beneficiary is qualified for the proffered position. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As discussed by the director and restated here, the *Handbook* indicates the following about the training and education required for market research analysts:

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.

The AAO notes that counsel refers to the position as an entry-level position. The *Handbook* describes the education required for entrants into the field of market research: 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. However, the petitioner has not established that the beneficiary has a bachelor's degree in marketing or a related field. Further the job duties described are those of a market research analyst in the *Handbook*, not a research assistant, administrative or management trainee, marketing interviewer or salesperson.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a master's degree in business administration, marketing, statistics, communications, or some closely related field. The beneficiary holds a bachelor's degree in hotel management.

The petitioner has not met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) and has not established that the beneficiary has the equivalent of a master's degree in the specific specialty required by the specialty occupation. The petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO finds that the proffered position does not qualify as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

An 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:

- (I) 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. 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 (5th 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 baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a marketing research analyst. Evidence of the beneficiary’s duties includes: the Form I-129; an August 18, 2003 letter of support from the petitioner; and petitioner’s response to the director’s request for evidence.

At the time of filing, the petitioner stated that the beneficiary’s duties would entail: gathering data on existing different suppliers’ prices, new products (15% of time); gathering data on other competitors’ products, prices, services, sales (15% of time); analyzing marketing methods, competition, and distribution channels and identifying opportunities for marketing performance (20% of time); researching market needs in Taiwan for the company to make decisions on adding new products for selling; locating new potential clients (20% of time); and developing and running reports of the company based on findings in marketing research for the company to make decisions on promotion, distribution, and pricing of products (35% of time).

The director did not address whether the proffered position was a specialty occupation in his decision. Upon review of the record, the AAO has determined that the proffered position is not a specialty occupation.

The *Handbook*, at page 173, states the following with regard to the employment of marketing research analysts:

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 discussion, 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 them 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

Because of the applicability of market research to many industries, market research analysts are employed in most industries....

The occupation of a market research analyst is a specialty occupation, normally requiring those seeking entry-level employment to have a master's degree in a related field. However, while the petitioner has identified its position as that of a market research analyst, its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention.

At the time of filing, the petitioner submitted a description of job duties very similar to the duties listing in the *Handbook* for market research analysts. Its only references to the beneficiary's role within the petitioner's business were phrased in general terms, e.g., "research market needs in general in Taiwan" and "gather data on other competitor's products, prices, services and sales." The information provided by the petitioner does not explain the duties of the position in the context of the petitioner's ongoing business.

A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., a market research analyst establishes research methodologies or performs market analyses. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

The petitioner has offered no description of the duties of its proffered position beyond the generalized description it provided in response to the director's request for evidence. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner provided a comparison between different parts suppliers prepared by the beneficiary. This report does not demonstrate that the position requires a degree in a specific specialty. Furthermore, the petitioner asserts that it is an entry-level position requiring a bachelor's degree in business administration. The petitioner undermines its argument that the proffered position is a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that 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 with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The petitioner's generalized statements about the duties to be performed cannot substitute for a description of the specific duties to be performed by the beneficiary. As previously noted, CIS must examine the actual employment of an alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. The petitioner has not provided information about the number of customers it serves or the types of information the market research analyst will analyze. Additionally, the petitioner has not adequately described its business in order for the AAO to understand how the market research analyst will fulfill its duties. The petitioner sells airplane and aircrafts parts. The petitioner's description of the duties of its position is so generic that it is not possible to identify those tasks and, therefore, whether the position is that of a market research analyst. Further, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation -- employment requiring 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 (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary's services.

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. For this additional reason, the petition may not be approved.

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.