



U.S. Citizenship
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Services

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FILE: WAC 04 211 51851 Office: CALIFORNIA SERVICE CENTER Date: JAN 11 2006

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:

SELF-REPRESENTED

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

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 wholesaler of general merchandise video games and video games accessories with twenty-five employees. It seeks to employ the beneficiary as a market research analyst. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

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

The issue before the AAO is whether the proffered position qualifies 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:

- (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 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 part-time market research analyst. Evidence of the beneficiary’s duties includes the Form I-129 and a June 30, 2004 letter of support from the petitioner.

At the time of filing, the petitioner stated that the beneficiary’s duties would entail, in part: monitoring and coordinating sales trading and transactions as well as distributorship of the videogames and accessories in the U.S. and other countries; devising methods to increase profitability, manage expenses and reduce company overhead; analyzing statistics, and other types of data, such as annual revenues and expenditures to develop solutions to decrease overhead expenses; reviewing data gathered on competitors and analyze their prices, methods of marketing, and distribution then make recommendations and assist in the implementation of the proposal. The petitioner indicated that the beneficiary was qualified for the position because she has earned the equivalent of a Bachelor of Science in Business Administration with a major in marketing. The petitioner submitted its income tax return for the year 2002 indicating gross sales of \$6,474,452.

In his denial, the director noted the duties described by the petitioner appear to reflect some of the duties performed by market research analysts as listed under market and survey researchers in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*). The director stated that sole reliance on a list of duties resembling those of a market research analyst to establish that the proffered position qualifies as a specialty occupation was misplaced. The director referred to the *Handbook* and stated that market research analysts research, compile, analyze market data and advise management and that the duties do not include acting on that data. The director found that the record failed to establish that the petitioner has a marketing division or staff to gather market data for analysis by the incumbent in the position. Additionally, the director refers to the *Handbook* in support of his conclusion that the petitioner does not engage in the type of business for which a market research analyst would be required on a full-time or part-time basis.

The AAO does not agree with the director’s conclusions regarding the industries in need of market research analysts. Based on the discussion of the occupation in the 2004-2005 edition of the *Handbook*, it concludes that such analysts may reasonably be found in virtually every industry and business seeking to enhance the sales of its products and/or services. However, the AAO does share the director’s concerns regarding the employment that has been described by the petitioner.

The *Handbook*, at page 173, states the following with regard to the employment of market 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.

On appeal, the petitioner contends that the company is expanding its operations and is opening another branch in Florida. The petitioner explains that with this expansion it requires the services of a marketing analyst to "conduct market research and to analyze market research analysis and trends in different parts of the country and abroad for our products." The petitioner submitted its organizational chart and brochures of an office building that it asserts is its additional location. The petitioner refers to the director's decision as indicating that the duties of the proffered position reflect those of a market research analyst and therefore is usually associated with a baccalaureate degree.

The record does not support the complexity of the duties of a market research analyst.

The petitioner has not established that the proffered duties are those of a market research analyst. It has not established 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).

As a whole, the *Handbook's* information on market research analysts conveys that their work is characterized by the design and implementation of data-collection methodologies, data collection, and precise data analysis, at a level of expertise that most often requires a master's degree. Note, for instance, this statement at page 174 of the *Handbook*:

In addition to being required for most market and survey research jobs in business and industry, a master's degree is usually the minimum requirement for a job as an instructor in junior and community colleges.

Many of the duties described by the petitioner are not those of a market research analyst such as: monitoring and coordinating sales trading and transactions as well as distributorship of the videogames and accessories in the U.S. and other countries; devising methods to increase profitability, manage expense and reducing company overhead. The information provided by the petitioner does not establish that the beneficiary's involvement with marketing research would be on such a specialized methodological and analytical level, or that it would require a master's degree in marketing or a related specialty. The record provides no information about the specific research and analytic methodologies that the beneficiary would employ and the specialized knowledge that she would have to apply in their use. There are no specifics about any of the job functions upon which the petitioner relies for specialty occupation status.

The submitted company product catalogue does not contain the name of the petitioner. The record does not contain evidence of the petitioner's customers. The petitioner has not provided a list of customers or competitors from which to gather research or to conduct surveys. The petitioner does not explain how it would utilize the services of a market research analyst in relation to its business of selling repackaged video games. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner's description of the duties of its position are not those of a market research analyst. The market research duties are generically defined to conclude that they require, on a day-to-day basis, the minimum of a bachelor's degree in the field. Duties such as monitoring and coordinating sales trading and transactions, and distributorship are more akin to those of a marketing manager, an occupation which does not require a degree in a specialty as a minimum requirement for entry. The duties of devising methods to increase profitability, manage expenses and reducing company overhead are typically those of a management analyst as described in the *Handbook*. While a management analyst is also generally a specialty occupation, requiring a master's degree in a specialty for employers in private industry, the listing of these duties is too vague and generic to determine whether the performance of the duties requires a degree in a specialty. As indicated in the discussion of market research analyst above, the petitioner does not describe the daily tasks of the proposed beneficiary, in relation to the company's business, that will be carried out in devising methods to increase profitability, manage expenses and reduce company overhead. A management analyst uses complex methodologies to analyze a company's profile to make recommendations. The record does not provide enough specifics to determine that the beneficiary's general managerial duties require a degree in a specialty. The AAO has determined that the performance of those duties do not meet 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 will employ the beneficiary in a specialty occupation under the first criterion.

The petitioner has not established the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor can the petitioner establish that the particular position is so complex or unique that it can be performed only by an individual with a degree.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish 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. On appeal the petitioner states "with this expansion [it] require[s] the services of a market research analyst to conduct market research and to analyze market research analysis and trends in different parts of the country and abroad for [its] products." Upon review of the record, the petitioner has not described the specific duties of the proffered position in relation to the nature of its business. The petitioner has not established 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 and therefore fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Beyond the decision of the director, the *Handbook* indicates that a master's degree is the minimum requirement for private sector market research and survey jobs. The petitioner indicated that the beneficiary is qualified for the position because she has the equivalent of a bachelor's degree in business administration with a major in marketing. The record does not establish that the beneficiary is qualified to perform the duties of a market research analyst in private industry. For this additional reason, the petition may not be approved.

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered 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.