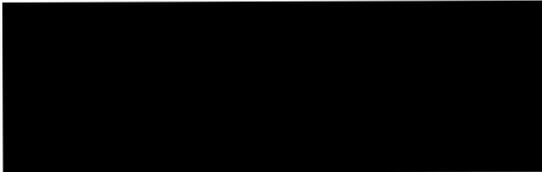


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D 2

FILE: EAC 04 197 51632 Office: VERMONT SERVICE CENTER Date: JUN 02 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:



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 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 full-service travel agency that seeks to employ the beneficiary as a travel operations management 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 on the basis of his finding that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

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

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 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 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 proposed position.

In its June 11, 2004 letter of support, the petitioner stated that the beneficiary would spend fifteen percent of her time managing its chartered flight sector’s entire operations in the New York area and arranging circulation and allocating schedules between Hungary and the United States; ten percent of her time evaluating the pricing of chartered flights between Hungary and the United States with respect to long-term profitability and competitiveness; ten percent of her time analyzing past revenues and marginal growth to project upcoming business directions and recommending budget allocation, personnel circulation, and in- and out-bound transportation services to management; ten percent of her time analyzing existing contracts, agreements, and ventures with various sectors of the travel industry; fifteen percent of her time researching competitors’ chartered flight rates, marketing and sales distribution network, target base, and pricing, and formulating the petitioner’s targeted marketing; ten percent of her time developing personnel circulation schedules in order to comply with optimal time, cost, and resources of the petitioner’s transportation services, and determining the feasibility of hiring additional staff; ten percent of her time performing comparison analysis on in-house versus subcontracts, ownership versus lease of equipment, manual versus technological implementations, and operational requirements; ten percent of her time conducting risk assessments to measure the financial risks associated with specific business decisions for the petitioners’ chartered flights, and determining strategies to minimize risks and losses; five percent of her time developing an optimum pricing schedule, taking into account estimated monthly revenues and operational costs, foreign exchange rates, and travel market conditions; and five percent of her time liaising with corporate clients in Japan, Hungary, and the United States to ensure that their needs and expectations have been met, and initiating negotiations for upcoming orders and contracts.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. Based upon its review of the entire record of proceeding, the AAO finds that the director’s decision was correct.

The AAO begins its analysis by observing that the proposed position and its duties are described in exclusively generic terms that identify job functions in the abstract, without relation to what they involve in actual practice in the petitioner’s travel business. These descriptions do not substantiate the level of knowledge that the beneficiary would employ in the job. They do not identify concrete substantive matters that the beneficiary would address in this particular petitioner’s business operations. They do not identify particular theoretical and practical applications of baccalaureate-level specialized knowledge that the beneficiary’s work would require. As a consequence of this abstract characterization of the job without relation to actual performance, there is no reasonable basis for the AAO to determine that the proposed position or the duties comprising it are unique or particularly complex or specialized.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the

Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

Counsel and the petitioner contend that the duties of the proposed position are similar to those of market research analysts and operations research analysts, as those occupations are described in the *Handbook*.

The 2006-2007 edition of the *Handbook* 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. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze statistical data on past sales to predict future sales. Market research analysts devise methods and procedures for obtaining the data they need. Often, they design telephone, mail, or Internet surveys to assess consumer preferences. They conduct some surveys as personal interviews, 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 and evaluating the data, market research analysts 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 also may 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.

The *Handbook* states the following with regard to the educational qualifications necessary for entry into this field:

A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree may be required, especially for technical positions, and increases opportunities for advancement to more responsible positions. Also, continuing education is important in order to keep current with the latest methods of developing, conducting, and analyzing surveys and other data. 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.

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. Many corporation and government executives have a strong background in marketing.

As the *Handbook* finds that market research analyst positions impose no specific degree requirement on individuals seeking employment in the field, the proposed position does not qualify as a specialty occupation under the first criterion, that is, by virtue of the position being identified as one that normally requires at least a bachelor's degree, or its equivalent, in a specific specialty. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). The petitioner does not indicate that the duties of the proposed position that comport with those of a market research analyst position are technical in nature, and require a master's degree. To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Accordingly, the petitioner has not established that the duties of its proposed position that are similar to those of a market research analyst qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor do the duties of the proposed position that are similar to those of a market research analyst qualify as a specialty occupation under either alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. No evidence has been submitted to establish this criterion.

Accordingly, the duties of the proposed position that are similar to those of a market research analyst do not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish that the duties of the proposed position that are similar to those of a market research analyst qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. It finds no evidence that would support such a finding, as the position proposed in the petition is similar to the market research analyst position described in the *Handbook*, which normally does not require a degree in a specific field.

Accordingly, the petitioner has not established that the duties of the proposed position that are similar to those of a market research analyst qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. No evidence has been submitted to verify that the proposed position qualifies as a specialty occupation under this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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.

A review of the duties of the proposed position that comport with those of a market research analyst does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge

and skill than that normally expected of non-technical market research analysts who routinely undertake a range of demanding and complex business activities. Therefore, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. There is no information in the record to support a finding that the market research analyst duties are more specialized and complex than the market research analyst positions for which the *Handbook* indicates no requirement for the highly specialized knowledge associated with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the market research duties of the proposed position qualify it as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Accordingly, CIS acceptance of counsel's contention that many of the duties of the proposed position are similar to those of a market research analyst does not qualify the proposed position as a specialty occupation.

The AAO next turns to the contention that the rest of the duties of the proposed position are similar to those of an operations research analyst. The AAO does not accept this contention. The *Handbook* indicates that operations research analysts help determine ways to effectively utilize money, materials, and equipment by applying analytical methods from mathematics, science, and engineering. Such applications are not established by the petitioner's description of the duties of the position. The scope of the proposed position lacks both the breadth and the depth of an operations research analyst position.

The petitioner has not demonstrated that its proposed position qualifies for classification as a specialty occupation.

Beyond the decision of the director, even if the AAO were to accept the contention that the duties of the proposed position are similar to those of operations research analysts, and there is no basis for the AAO to do so, the petition still would not be approved, as the beneficiary does not qualify to perform the duties of such a position.

An operations research analyst is normally a specialty occupation, normally requiring those seeking entry-level employment to possess a master's degree in operations or a closely related field, such as computer science, engineering, business, mathematics, information systems, or management science, coupled with a bachelor's degree in computer science or a quantitative discipline such as economics, mathematics, or statistics.

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.

As noted previously, the *Handbook* reports that operations research analysts seeking entry-level employment are normally required to possess a master's degree in operations or a closely related field, such as computer science, engineering, business, mathematics, information systems, or management science, coupled with a bachelor's degree in computer science or a quantitative discipline such as economics, mathematics, or statistics.

If a particular specialty occupation requires an educational attainment *higher* than that of a baccalaureate degree, then the beneficiary of the proposed position must possess that requisite higher education. Therefore, the petitioner must prove that the beneficiary possesses the equivalent of a master's degree.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education, so she does not qualify under the first criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. While the record contains an evaluation stating that the beneficiary's foreign degree is equivalent to a bachelor's degree in general studies with a concentration in English, the position of an operations research analyst requires at least a master's degree.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so she does not qualify under the third criterion, either.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing (1) that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and (2) that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner must classify the beneficiary's combination of education and work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is 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 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.

The beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as the evaluation states that the combination of the beneficiary's education and experience are equivalent to a bachelor's degree in tourism management. However, the position of an operations research analyst requires a master's degree.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit 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).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is unqualified under this criterion because the evaluation does not state that the beneficiary has the equivalent of a master's degree.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit 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.

The AAO next turns to the fifth criterion. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the alien must have a baccalaureate degree followed by at least five years of experience in the specialty in order to demonstrate equivalency to a master's degree. It must be clearly demonstrated (1) that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; (2) 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 (3) 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 authorities in the same specialty occupation¹;
- (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.

The record indicates that the beneficiary earned her degree in 1995. The petition was filed on June 22, 2004. The petitioner must demonstrate that at least five years of the beneficiary's work experience meets the requirements delineated at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

According to the record, the beneficiary worked as a travel management specialist for the World Line Company from April 1995 through December 1998. The record contains no evidence regarding the beneficiary's work experience after December 1998, so the beneficiary cannot demonstrate five years of qualifying experience. Moreover, the record does not demonstrate that this work experience included the theoretical and practical application of a body of highly specialized knowledge, or that it was gained while working with peers, supervisors, or subordinates with degrees in the specialty, and that the beneficiary achieved recognition of expertise in the field as defined at section (i) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Therefore, the petitioner has not demonstrated five years of qualifying work experience. As such, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Thus, even if the AAO were to accept the petitioner's contention that the duties of the proposed position rise to the level of an operations research analyst, the beneficiary would not qualify to perform its duties of a specialty occupation. For this additional reason, the petition may not be approved.

The petitioner has failed to establish that the position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will not disturb the director's denial of the petition.

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).

EAC 04 197 51632

Page 10

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.