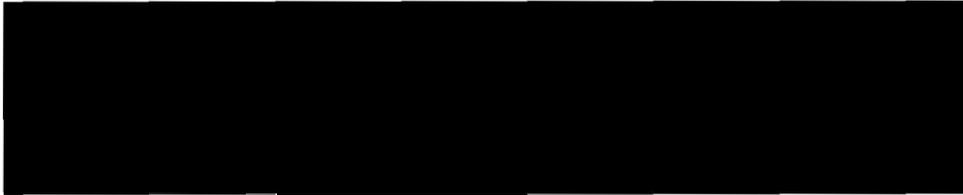


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FILE: EAC 04 266 51974 Office: VERMONT SERVICE CENTER Date: JUN 02 2006

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director 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 scholastic materials publisher and retailer that seeks to employ the beneficiary as a university textbook manager. 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 her determination 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:

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 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.

With 9,117 employees and gross annual income of \$1.2 billion, the petitioner is North America’s largest operator of college bookstores. In addition to its 680 bookstores, the petitioner provides course administration services to college faculty, and it works with over 20,000 publishers and vendors so as to provide faculty with appropriate data and analysis on available book selections.

According to the petitioner’s September 24, 2004 letter of support, the beneficiary would spend the majority of his time collaborating with the faculty of the university that the bookstore is supplying. He would assist faculty in the textbook selection process by providing appropriate data and analysis on available selections.

He would also determine the specific inventory of scholastic materials by analyzing statistical data and prepare reports based upon this research; examine the statistical data of competitors; collect and process consumer purchasing behavior data; apply business development strategies in order to improve the overall efficiency of the bookstore; act as a liaison between the petitioner, publishing companies, and campus faculty; and employ the petitioner’s proprietary database management system to facilitate his responsibilities.

The director denied the petition, finding that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel contends that the director erred in denying the petition. Counsel asserts that the duties of the proposed position are similar to those of a market researcher.

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.

The *Handbook* uses the terms “market researcher” and “market research analyst” interchangeably.

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, such positions do not normally qualify as specialty occupations. 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. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). The petitioner has not indicated that the position is a technical market research analyst for which a master's degree would be required. 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 its proposed position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

However, the AAO does not agree with counsel that the duties of the proposed position parallel those of market research analysts. Market research analysts 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. As a portion of their responsibilities, they devise methods and procedures for obtaining needed data, often designing telephone, mail, or Internet surveys to assess consumer preferences. It is market research analysts' work in the design and analysis of original market research that sets this occupation apart from what might otherwise be characterized as marketing or sales manager positions, employment that also requires the incumbents to perform marketing research as they seek to identify and expand business opportunities for their employers. The duties of the proposed position do involve some market research and analysis of internal company sales data, etc., but do not involve market research of the complexity described above and performed by market research analysts. Moreover, the petitioner indicated in its letter of support that the majority of the beneficiary's time would not be spent on these duties.

Accordingly, even if the AAO were to concur with counsel that the proposed position is that of a market research analyst, which it does not, the petition could not be approved, as market research analyst positions do not normally require degrees in a specific field of study.

The duties of the proposed position do not fit neatly within one of the occupational groupings found in the *Handbook*. Rather, the duties of the proposed position combine those of marketing managers, sales managers, and purchasing managers, as those positions are described in the *Handbook*.

As noted previously, the market research duties entailed in the proposed position are analogous to those of marketing managers rather than market research analyst. The management duties of the position are similar to those of sales managers. The textbook acquisition-related duties of the beneficiary are similar to those of purchasing managers.

The *Handbook* states the following with regard to the educational qualifications required for marketing and sales managers:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous. . . .

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists. In small firms, where the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

Thus, the duties of the proposed position that are similar to those performed by marketing and sales managers do not qualify the position for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires a showing that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the type of position being proffered. The *Handbook* indicates that most positions are filled on the basis of experience (most positions “are filled by promoting experienced staff or related professional personnel”). Moreover, the fact that some employers “prefer” a degree or that individuals possessing degrees “should have the best job opportunities” does not rise to this criterion’s standard of employers normally requiring at least a bachelor’s degree or its equivalent in a specific specialty. As such, marketing and sales managers do not qualify as specialty occupations under the first criterion.

The *Handbook* reports the following educational requirement for individuals seeking employment as a purchasing manager:

Qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who have a college degree and who are familiar with the merchandise they sell and with wholesaling and retailing practices. Some retail firms promote qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods.

Educational requirements tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor’s degree program with a business emphasis. Many manufacturing firms put yet a greater emphasis on formal training, preferring applicants with a bachelor’s or master’s degree in engineering, business, economics, or one of the applied sciences. A master’s degree is essential for advancement to many top-level purchasing manager jobs.

These findings do not support counsel’s contention that a bachelor’s degree is required for entry into this occupation. The *Handbook* states that educational requirements vary, and that most employers use a combination of internal promotion and hiring individuals with bachelor’s degrees in order to fill these positions. Moreover, the fact that many employers “prefer” a degree is not synonymous with the “normally required” standard imposed by the regulation.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either 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.

The AAO has reviewed the job postings submitted by counsel. However, these postings do not establish that a degree requirement in a specific field is an industry standard. Again, 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 second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as they are similar to those of marketing, sales, and purchasing managers as discussed in the *Handbook*, which do not require a degree in a specific specialty. The record contains no documentation to support a finding that the proposed position is so complex or unique that, in contrast to many such positions with no degree requirement, it can only be performed by an individual with at least a bachelor's degree, or its equivalent, in a specific specialty.

Therefore, the petitioner has not established that the proposed position qualifies 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.

On appeal, counsel has submitted copies of job applications and resumes of employees who have held the proposed position previously. Counsel contends that the proposed position qualifies as a specialty occupation under this criterion because all of these employees held diplomas. The AAO notes that of these employees, three held bachelor's degrees in business administration with no further specialization, one held a bachelor's degree in business administration with a concentration in marketing, one held a bachelor's degree in an unspecified field, one held a bachelor's degree in business economics, one held a bachelor's degree in management, one held a bachelor's degree in psychology, and one held a bachelor's degree in an unspecified field and a master's degree in psychology.

These items reinforce the AAO's determination that a degree in a specific specialty is not required for the proposed position. 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. *See Matter of Michael Hertz*.

Moreover, the AAO notes that no supporting documentation, such as payroll records or other information, has been submitted to demonstrate that any of these individuals actually worked for the petitioner. 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)). 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).

Counsel has also submitted an online job posting from the petitioner, and asserts that this advertisement satisfies the third criterion. This job posting also confirms the AAO's finding that, while the petitioner may require a degree for the position, it does not require that the degree be in any particular field. This posting simply says that a bachelor's degree is required; it does not state that it need be in any particular field.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO next 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.

To the extent that they are depicted in the record, the duties of the proposed position 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 duties of the proposed position are more specialized and complex than the duties of the general range of marketing, sales, or purchasing manager 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 proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify 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), and the petition was properly denied. As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will not disturb the director's denial of the petition.

Finally, the AAO notes that previous counsel's appellate brief drew attention to the fact that the director did not issue a request for evidence. However, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to again supplement the record with new evidence.

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.