



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

D2



FILE: WAC 04 159 53024 Office: CALIFORNIA SERVICE CENTER Date: JUN 06 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.

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 wholesale distributor of office supplies that seeks to employ the beneficiary as a market research 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 and previously submitted 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 petitioner's 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 researching market conditions to determine potential sales of products domestically and internationally; establishing research methodology and designing formats for data gathering, such as surveys, opinion polls, and questionnaires; examining and analyzing statistical data to forecast future marketing trends; gathering data on competitors and analyzing prices, sales, and methods of marketing and distribution; collecting data on customer preferences and buying habits; reviewing sales records and current market information to determine value or sales potential of products; preparing reports and graphic illustrations of findings; sharing market and competitor intelligence with all applicable channels within the company; checking/transferring data files to and from vendors and customers; and coordinating and corresponding with facilities in China to assist and direct marketing research methodologies in China. The petitioner endeavors to employ the beneficiary who holds two master's degrees from Georgia State University and two bachelor's degrees from institutions in China.

In the denial letter, the director concluded that many of the proposed duties reflect those of a market research analyst as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). However, the director was not persuaded that the beneficiary would perform the proposed duties, which he found to qualify as those of a specialty occupation. Sole reliance on a list of duties resembling those of a market research analyst taken from the *Handbook* to establish that the proposed position qualifies as a specialty occupation is misplaced, the director stated. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties of the proposed position combined with the nature of the petitioning entity's business operations are factors that are considered, and that each position must be evaluated based on the nature and complexity of the job duties. The director stated that the beneficiary's degree in a related area does not guarantee that the proposed position is a specialty occupation; and that performing incidental specialty occupation duties is insufficient to establish that the proposed position is a specialty occupation. The director found that the petitioner is not in an industry in which market research analysts are employed, and that the petitioner does not have the organizational complexity which would necessitate a market research analyst. The director concluded that the proposed duties involve those of advertising, marketing, and sales occupations that the *Handbook* reveals do not require a bachelor's degree in a specific specialty. Performing specialty occupation duties that are incidental to the non-specialty primary functions, the director stated, is insufficient to qualify a position as a specialty occupation. The director found the beneficiary's prior H-1B approval unpersuasive in establishing that the proposed position qualifies as a specialty occupation. According to the director, the evidence failed to show that the job offered could not be performed by an experienced person whose educational training falls short of a baccalaureate degree.

On appeal, counsel states that the petitioner requires a market research analyst to increase its profitability, growth, and size; and he discusses the beneficiary's qualifications. Counsel asserts that the proposed position

should be approved on the basis that the beneficiary was previously granted H-1B status for a similar employer in a position that parallels the one offered here. Citing *Unico American Corp. v. Watson*, 1991 WL 11002594 (C.D. Cal. Mar 19, 1991), counsel states that it indicates that CIS should defer to an employer's view, fully consider its evidence, and not rely solely on standardized governmental classification systems. Counsel states that *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) indicates that a petitioner's size and newness of operation are irrelevant in determining whether a position qualifies as a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

Counsel asserts that CIS approved a petition that had been previously filed on behalf of the beneficiary by another employer.

The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same assertions and evidence that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988)

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The AAO concurs with the director's conclusion that the evidence does not provide a basis for approving the petition. However, the AAO disagrees with the director's reasoning in several respects. A position involving some non-specialty-occupation duties does not necessarily preclude it from being a specialty occupation. A position may require a baccalaureate degree or an advanced degree in a specific academic field even though some of the position's duties do not. The 2006-2007 edition of the *Handbook* does not suggest that a particular kind of business would not need a market research analyst, or that a business must have a certain organizational structure in order to substantiate the need for a market research analyst. Notwithstanding this, the AAO does not find that the proposed position qualifies as a specialty occupation.

The AAO concurs with counsel's assertion that the offered position is that of a market research analyst. The *Handbook*, a resource that the AAO routinely consults, states the following about 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 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 discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys under the market research analyst's direction.

After compiling and evaluating the data, market research analysts make recommendations to their client or employer on the basis of 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 also might develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

The *Handbook* states that a market research analyst is not required to hold a baccalaureate degree in a specific academic field. It states:

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.

Based on the *Handbook's* information and the evidence in the record, the AAO finds that the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position. The *Handbook* does not indicate that a baccalaureate degree for market research analyst positions need be in any particular field.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Furthermore, as discussed earlier in this decision, the *Handbook* reveals that a market research analyst does not require a baccalaureate degree in a specific academic specialty. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As discussed in this decision under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the position offered here resembles that of a market research analyst, which is an occupation that the *Handbook* reports does not require a bachelor's degree in a specific specialty. The submitted evidence of the petitioner's letters, organizational chart, and client and employee lists are insufficient to establish that the proposed duties are so specialized and complex that the knowledge to perform them would normally require a baccalaureate or higher degree in a specific academic specialty. Accordingly, the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, 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 on this ground.

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.