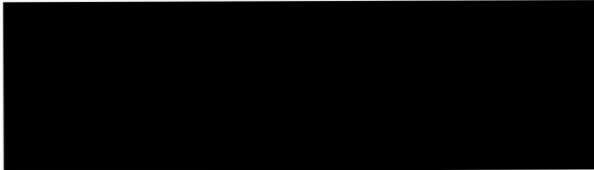


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U.S. Citizenship  
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*Dr*

FILE: WAC 04 091 50568 Office: CALIFORNIA SERVICE CENTER Date: MAR 29 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.

A handwritten signature in cursive script, appearing to read "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 sustained. The petition will be approved.

The petitioner is an importer and wholesaler of fashion jewelry, gifts, and general merchandise. It 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 on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits additional 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 target markets and market conditions in local, regional, or national areas to determine potential sales of a product or service; gathering information on competitors, prices, sales, and marketing and distribution methods; using survey results to create a marketing campaign based on regional preferences and buying habits; developing customer segmentation profiles, sales forecasting models, reports, and presentations for corporate clients; developing and implementing marketing plans and programs for products offered by outside clients or in-house requirements; facilitating communication and collaboration to create more productive and efficient catalog mailings to help clients meet their production and distribution goals; forecasting and analyzing circulation, response, demand, and profits across multiple channels for multiple segments of customers; providing clear, concise market reports and feasibility studies for the customer acquisition team and ensuring proper execution of mailing events and be able to relate the impact of costs on marketing initiatives; designing ways to improve customer response, demand, and profits across existing and new channels due to the client's requirements; and performing industry and market research. For the proposed position the petitioner requires a bachelor's degree in business administration, international business, or marketing.

In the denial letter, the director stated that many of the proposed duties reflect those of a market research analyst as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*); but that sole reliance on duties resembling those of a market research analyst as that occupation is described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary's obtaining a degree in a related area does not guarantee the position is a specialty occupation, and that incidental specialty occupation duties do not qualify a position as a specialty occupation. The director found that the petitioner does not engage in the kind of business that the *Handbook* describes as employing a market research analyst on a regular full time basis for any significant period of time, and does not have the organizational complexity to validate a position for a market research analyst. According to the director, the proposed duties are more similar to those of a marketing manager, which the *Handbook* reveals is an occupation that does not require a bachelor's degree in a specific specialty. The director concluded that the established none of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that its industry is competitive and requires a market research analyst, who has at least a bachelor's degree, and that understands the requirements of large companies.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) the petitioner must show that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. In the letter accompanying the H-1B petition, the petitioner stated that it has over 200 small and mid-size customers in industries such as gift shops, chain stores, and fashion design companies, and that it recently established a website. The petitioner discussed seven potential clients. According to the petitioner, corporate clients need detailed marketing research and market analysis. The petitioner's website displays the jewelry items that it sells. Based on the evidence in the record, the proposed position would require theoretical and practical application of a body of highly specialized knowledge and a bachelor's degree in a relevant field such as marketing; or an advanced degree in business administration, marketing, statistics, communications, or a closely related discipline.

The record reflects that the beneficiary is qualified for the proposed position as she holds a bachelor's degree in business administration-international business from California State Polytechnic University Pomona in California. Thus, the beneficiary qualifies for the proposed position.

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 sustained that burden.

**ORDER:** The appeal is sustained. The petition is approved.