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20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
and Immigration  
Services

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APR 02 2007

FILE: WAC 05 204 53314 Office: CALIFORNIA SERVICE CENTER Date:

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 service center 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 engaged in the distribution and export of resins and plastics. It seeks to employ the beneficiary as a marketing analyst and endeavors to classify her 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 does not qualify as a specialty occupation and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

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 are 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) consistently 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.

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 (5<sup>th</sup> 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 record of proceeding before the AAO contains: (1) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a marketing analyst. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Research economic trends in the industry in regional and international areas to determine potential sales;
- Examine and analyze statistical data to forecast future marketing trends;
- Identify and evaluate potential markets;
- Establish research methodology and format for data gathering such as surveys, opinion polls, or questionnaires;
- Gather information on competitors’ prices, sales and methods of marketing and distribution;
- Gather information on prevailing prices;
- Measure the effectiveness of marketing, advertising, communication programs and strategies;

- Monitor and investigate competitive strategies within the industry;
- Collect data on suppliers;
- Check on current prices and current trends;
- Make reports and recommendations to management;
- Seek and provide information to help companies determine their position in the marketplace;
- Identify short and long term marketing decisions for the company;
- Translate complex numerical data into non-technical, written text;
- Evaluate findings and make recommendations based upon the findings;
- Prepare reports and illustrations of findings; and
- Submit findings and proposals to management.

The petitioner does not state that it requires a bachelor's degree in any specific discipline for entry into the proffered position, but finds the beneficiary qualified for the position by virtue of her foreign education which has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in hotel and restaurant management from an accredited college or university in the United States.

To determine whether the duties described are those of a specialty occupation, the AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As the petitioner has characterized its position as that of a marketing analyst, the AAO first turns to the *Handbook's* description of market and survey researchers, the occupational title that is most closely related to the proffered position. The *Handbook*, 2006 – 07 edition, at page 175, describes the occupation of market or marketing research analysts as follows:

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<sup>1</sup> The 2006–2007 *Handbook* does not state that the degree must be in a particular specialty.

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.

The AAO finds the petitioner's description of the duties of its proffered position to reflect the type of activities generally performed by market research analysts. The occupation of market research analyst may be a specialty occupation, normally requiring those seeking employment in the private sector to have a minimum of a bachelor's degree for entry into the occupation. However, while the petitioner has identified its position as that of a marketing analyst (market research analyst), its description of the beneficiary's duties is so generic and nonspecific that it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis. A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used in the *Handbook* or the *Dictionary of Occupational Titles (DOT)* in discussing an occupational title, e.g., research economic trends in the industry to determine future sales; establish research methodology and format for data gathering such as surveys, opinion polls, or questionnaires; and gather information on competitors prices, sales and methods of marketing and distribution.

While the petitioner states that the beneficiary would research economic trends in the industry to determine future sales, it offers no indication of what the petitioner would require of the beneficiary in performing this duty, what type of data the petitioner needs to determine potential sales of a product or service, or what type of market research would be performed. The petitioner states that the beneficiary would gather data on competitors' prices, sales and methods of marketing and distribution, measure the effectiveness of marketing, advertising, communication programs and strategies, and monitor and investigate competitive strategies within the industry. Again, the petitioner does not explain what it would require of the beneficiary in performing this task, what type of data would be gathered on competitors and how the data would be gathered, or what type of information or the source of information that would be provided in measuring the effectiveness of marketing, advertising, communication programs and strategies. The petitioner provides no detailed statement of the tasks the beneficiary would perform in monitoring and investigating competitive strategies within the industry, nor does the petitioner identify what type of "competitive strategies" would be monitored or investigated. Without this type of substantive information on the actual work that the beneficiary would perform, the AAO is unable to determine whether the responsibilities of the proffered position would require the beneficiary to hold the minimum of a baccalaureate or higher degree or its equivalent to perform them. Accordingly, the record does not establish that the offered position qualifies as a specialty occupation under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

The petitioner submitted copies of job advertisements for market research analyst positions to establish that a degree requirement is common to the industry in parallel positions among similar organizations. None of those advertisements, however, appear to be from organizations similar in nature and scope to that of the petitioner. The advertisements are, therefore, of little evidentiary value and do not establish the first alternative prong. The petitioner also provided a statement from the president of PreServe Resources, Inc. (PreServe) who indicates that PreServe is engaged in business that is similar in nature and income to that of the petitioner, that it employs a market research analyst, and that its entry level requirement for a market research analyst is a bachelor's degree in business, marketing or a related field. The record does not contain, however, any evidence to establish the nature of PreServe's business, that it employs a market research analyst, or that any such employee possesses a baccalaureate level education. Simply going on the 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 190 (Reg. Comm. 1972)). The statement from PreServe also fails to establish that its hiring standard is common to the industry in parallel positions among similar organizations. Further, the AAO also concludes that the record before it does not establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. It finds no evidence in the record that would support such a finding. As previously stated, the duties of the proffered position are described by the petitioner in such generic and nonspecific terms that it precludes the AAO from determining precisely what tasks the beneficiary would perform on a daily basis. Accordingly, the petitioner cannot establish its position as a specialty occupation under either prong of the second criterion.

The AAO now considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine the petitioner's ability to meet the third 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 employee's diplomas. The petitioner states that this is the first marketing analyst that it has sought to employ and, therefore, offers no evidence in this regard. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The duties of the proffered position as described are too generic to determine what specific tasks would be performed by the beneficiary. The generic description of the duties of the proffered position discussed under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) also makes it impossible to evaluate these duties under the specialized and complex threshold of the fourth criterion. Accordingly, the AAO concludes that the proffered position is not a specialty occupation under the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.