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U.S. Citizenship  
and Immigration  
Services

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MAY 31 2007

FILE: LIN 04 263 54002 Office: NEBRASKA 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.

*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 construction and remodeling business 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 based on his determination that the record failed to establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

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) consistently interprets the term “degree” in the above criteria 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 petitioner seeks the beneficiary’s services as a market research analyst. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s September 21, 2004 cover letter in support of the petition; and counsel’s December 2, 2004 response to the director’s request for evidence. As stated by the petitioner, the proposed duties are as follows:

As a Market Research Analyst [the beneficiary] will use knowledge of marketing strategies and business development to research market conditions in local, regional and international areas in order to determine potential sales of service and consulting. He will be responsible for establishing research methodology and designing format for data gathering, such as surveys, opinion polls, questionnaires, financial information and clients’ concerns and/or requisites. [The beneficiary] will examine and analyze statistical data in order to accurately forecast future marketing and housing trends, gather data on competitors and analyze prices, methods of approaching and tackling potential customers, distribution and bills of sales. [The beneficiary] will also create, develop and implement specialized information questionnaires regarding customers’ preferences, particular needs, buying habits and re-modeling budget availability and deliver results in the form of revenue, gross margin, market share figures and growth development. In addition to these responsibilities, he will create clearly written reports, summarize conclusions, make recommendations, and propose

alternate courses of action when possible and will develop and implement procedures for identifying advertising needs.

In his denial, the director found that the petitioner, which is a property rehab business with six employees and a gross annual income of \$76,000, had not demonstrated that it requires the full-time services of a market research analyst. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel reiterates the proposed duties as described above by the petitioner. Counsel also states that the hiring of an in-house market research analyst is necessary for the petitioner's "further and successful expansion." Counsel states further that the evidence of record contains copies of job listings as evidence that a market research analyst position requires a baccalaureate degree.

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.

The record's descriptions of the proffered position and the duties comprising it, including those listed in counsel's December 2, 2004 response to the director's request for additional evidence, are limited to generalized functions that the petitioner and counsel have ascribed to the position, such as "[R]esearch[ing] market conditions in local, regional and international areas in order to determine potential sales of service and consulting"; "[E]stablishing research methodology and designing format for data gathering, such as surveys, opinion polls, questionnaires, financial information and clients' concerns and/or requisites"; "[E]xamin[ing] and analyz[ing] statistical data in order to accurately forecast future marketing and housing trends"; and "[G]ather[ing] data on competitors and analyz[ing] prices, methods of approaching and tackling potential customers, distribution and bills of sales." The petitioner has not identified methodologies or applications of specialized knowledge that actual performance of the position's functions would involve, has not provided details of concrete matters upon which the beneficiary would work. Nor has the petitioner explained or provided documentary evidence to establish how the beneficiary's actual substantive work would require at least a bachelor's degree level of knowledge in a specific specialty.

A position's qualification as a specialty occupation under the related statute and regulations is not accomplished by a petitioner's composing general duties that align with general duties that the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* or other DOL resources ascribe to a particular occupational category, for it is the actual performance requirements that determine the type and level of educational credentials necessary for a particular position. As a consequence of the lack of detail about the actual substantive work and associated educational requirements of the proffered position, the record lacks a reasonable basis for the AAO to conclude that the evidence of record satisfies any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns first to 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; 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 *Handbook* reports that the industry requires a degree; whether the industry's 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)).

At the outset, the AAO notes deficiencies in the record. On appeal counsel asserts that the petitioner requires the services of a market research analyst due to its "further and successful expansion." Information on the petition that was signed by the petitioner's president on September 22, 2004 reflects that the petitioner was established in 2003, and has six employees and a gross annual income of \$76,268. The payroll documentation for the period ending on January 19, 2005, submitted by counsel on appeal, reflects that the petitioner has six employees, and the petitioner's Schedule C, Profit or Loss from Business, of its 2003 federal income tax return reflects \$76,268 in gross receipts or sales. The record contains no evidence of the petitioner's expansion or any documentation of record that current expansion plans are underway or about the specific requirements of those plans. 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).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of a market research analyst. In view of the above discussion, the exact nature of the proffered position is not clear. Further, even if the AAO were to conclude that the proffered position was that of a market research analyst, as asserted by counsel, a review of the Market and Survey Researchers category in the 2006-07 *Handbook* does not indicate that a bachelor's degree in a specialty is required for a market research analyst position. While the *Handbook* indicates that a degree is generally required, it indicates that a wide variety of courses will prepare a person to perform the duties of a market research analyst. The petitioner did not describe the duties requiring a master's degree in a market research analyst-related field indicated in the *Handbook*. In view of the foregoing, the position does not satisfy the regulatory requirement for eligibility as a specialty occupation under the first criterion.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for market research analysts. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for accountants in a variety of industries, including wire and cable, pharmaceuticals, broadcasting, public utilities, biotechnology, real estate, and manufacturing. The petitioner's industry, however, is not represented. Thus, the advertisements are not probative.

The record also contains six letters from representatives of various businesses who assert, in part, that the requirement of a baccalaureate degree for market research analyst positions is the industry norm. There is no evidence, however, to show that the majority of these businesses are similar to the petitioner. One of the writers describes his business as follows: “[W]e assist foreign investors by providing sound advice in investments, sales & marketing programs to start new business, legal and administrative processes and property purchases.” Another writer describes his business as follows: “[Our company] is engaged in the sales of Muscular Sports Therapy Machines as well as providing muscular therapy by certified physical therapists.” Another writer describes her business as follows: “We provide professional, financial, management and corporate services to small and medium sized organizations.” Another writer describes his business as follows: “[Our business] is a Florida based corporation engaged in the business of providing world class consulting services that enable client enterprises to confront the challenge of sustaining profitable double-digit growth as each added business appears to contradict the other.” **It is noted that the representative of a business possibly similar to the petitioner’s, [REDACTED] provides no evidence in support of his assertion that his business employs a market research analyst. Further, none of the writers provides any evidence in support of their assertion that a baccalaureate degree is an industry norm, or relies on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor’s degree in a specific specialty. 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)). The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).**

The record also does not include any evidence from any professional associations regarding an industry standard. Further, there is no documentation to support the complexity or uniqueness of the proffered position. Also, as evident in the earlier discussion of the generality of information presented about the proffered position, the record does not develop the position as sufficiently unique or complex to satisfy the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel indicates on appeal that the proffered position is a new position, it will not be discussed further. The evidence of record does not establish this criterion.

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

To the extent that they are depicted in the record, 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. The AAO here incorporates its discussion about the lack of concrete evidence about the proposed duties. The duties are not described in sufficient depth to establish the specialization and complexity required by this criterion. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

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.