



U.S. Citizenship
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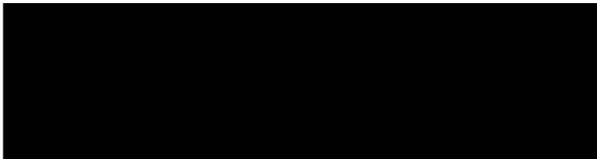
FILE: WAC 04 181 52188 Office: CALIFORNIA SERVICE CENTER Date:

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.

John F. Grissom
Acting 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 sustained. The petition will be approved.

The petitioner is an importer/wholesaler. It seeks to employ the beneficiary as a market research analyst 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 concluding that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. The director noted that “it does not appear that the petitioner has the organizational complexity to validate a position for a Market Research Analyst. The record fails to establish that the petitioner has a marketing division, department, team, staff or even any marketing specialists to gather market data for analysis by a market research analyst.” The director further noted that that the record is insufficient to classify the offered position as a market research analyst position related to the type of industry in which the beneficiary would be employed.

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; (5) the Form I-290B and supporting documentation; (6) the AAO’s decision rejecting the appeal; (7) the petitioner’s motion to reopen and reconsider; (8) the letter from the AAO reopening the matter on motion; and, (9) the petitioner’s appeal brief dated October 26, 2008 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:

[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 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.

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 (5th 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 is a U.S. subsidiary of a Korean corporation, The Hite [the parent company]. In 2007, the parent company employed 1658 individuals, and is the “largest brewery in Korea and maintains approximately 50% + market share.” The petitioner also explained that The Hite merged with Jinro. Jinro is a Japanese firm with 847 employees worldwide and global sales of \$376 million in 2004. The petitioner stated that the “two companies represent the merger of the largest Korean beer company to the largest Korean soju company.” The petitioner also explained that the parent company established a subsidiary in the United States for the “purpose of entering the US beverage market and to begin distribution in the United States for the purpose of company expansion.”

The aim of the petitioner in creating the position of market research analyst is to investigate and identify opportunities for growth in the U.S. market for products manufactured by the

petitioner's Korean parent company. In its February 7, 2005 response to the director's request for additional evidence, the petitioner stated that the duties of the proposed position would include the following:

[The beneficiary will research market conditions in California, the U.S., and Korea to determine potential sales of new products or services relating to [the petitioner]. [The beneficiary] will establish research methodology and design format for data gathering, such as surveys, opinion polls, and/or questionnaires. He will also examine and analyze statistical data to forecast future marketing trends; gather data on [the petitioner's] competitors and analyze prices, sales, and methods of marketing and distribution; collect data on customer preferences and buying habits and prepare reports and graphic illustration of functions.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. The director found that the petitioner lacked the "organizational complexity" to credibly offer a full-time position as a marketing research analyst.¹

The AAO will first address the director's characterization of the proposed duties as those typically performed by marketing managers, positions that typically do not qualify for classification as specialty occupations. The director noted that absent a marketing and sales staff, the beneficiary would be performing duties typically performed by a marketing manager. However, the AAO notes that the purpose of the petitioner's Korean parent in establishing the petitioner was to prepare and develop a market for its products, and finds that the petitioner intends to employ the beneficiary as a market research analyst. The AAO finds that the duties for the proposed position are analogous to those of market research analysts.

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 duties of the proposed position are similar to the duties for the position of market research analyst as outlined in the *Handbook*. The *Handbook* states that market research analysts are responsible for "gathering statistical data on competitors and examining prices, sales, and

¹ In arriving at this conclusion, the director noted the petitioner's small size and its lack of a demonstrated marketing division to implement the marketing strategy, or a sales division to implement advertising or a sales campaign as a result of the research performed by the market research analyst.

methods of marketing and distribution, they analyze data on past sales to predict future sales;" which is similar to the proposed duties where the beneficiary will "analyze and evaluate international market trends and related data on health and beauty aid products"; "evaluate international economic currents and create economic forecast"; and "collect and analyze competitors' data on marketing and sales in the US." The *Handbook* further states that market research analysts "devise methods and procedures for obtaining the data they need" and "after compiling and evaluating the data, market research analysts make recommendations to their client or employer on the basis of their findings." These duties are similar to the petitioner's proposed duties in that the beneficiary will "analyze marketing and sales data as well as sales costs for the Company Products to plan effective international market strategies"; and "plan strategic distribution of the Company Products in the US." In reviewing the 2008-2009 edition of the *Handbook*, the AAO finds that the duties and responsibilities of the proposed position are encompassed within the *Handbook's* entry for market research analysts.

The AAO disagrees with the director that the petitioner lacks the "organizational complexity" to offer a full-time position as a market research analyst. Although the petitioner currently employs only five individuals, this focus ignores the scale and scope of the Korean parent's organization. The petitioner was established as a wholly owned subsidiary of the Korean parent, and the sole reason for its creation was to prepare and develop a market in the United States for its parent company. As stated in the October 26, 2008 appeal brief, the "market research data that is performed in the United States is utilized by the US subsidiary but transmitted to the Korean executives of the foreign parent corporation in their decision of how to execute the best marketing plan."

The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has submitted a detailed description of the duties of the proposed position, that, in combination with this particular record's information about the petitioner's business, establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO notes that the beneficiary possesses the equivalent of a master's degree in marketing, so he is qualified to perform the duties of this specialty occupation. The petitioner has established both that the position qualifies for classification as a specialty occupation and that the beneficiary is qualified to perform the duties of that specialty occupation. As such, the petition will be approved.

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.