



U.S. Citizenship  
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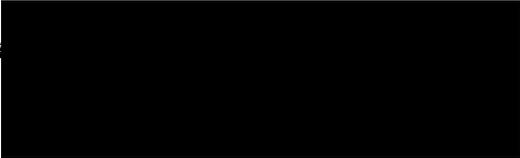
*Dr*

FILE: LIN 04 006 51169 Office: NEBRASKA SERVICE CENTER Date: **OCT 03 2005**

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*

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 dismissed. The petition will be denied.

The petitioner, a dental supply firm, 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 basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

In order to determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely upon 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 (RFE); (3) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; and (5) the petitioner’s Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In the initial submission, the petitioner described the duties of the proposed position as follows:

The specific duties undertaken by [the beneficiary] include the following: (1) Researching national and international market conditions and trends in the dental products industry through the internet, periodicals, and other direct market research methods; (2) collecting, examining[,] and analyzing statistical data to determine methods of marketing and distribution; (3) submit analytical market reports to help promote domestic and international sales; and (4) collect data and research market to help management and technical personnel to better understand how the company’s products are able to meet the client’s needs.

In the RFE response, counsel stated that the beneficiary would spend 40% of her time performing the first group of tasks, 20% on the second, 20% on the third, and 20% on the fourth.

The *Handbook* states the following with regard to the employment of market research analysts:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Market research analysts devise methods and procedures for obtaining the data they need. They often design telephone, mail, or Internet surveys to assess consumer preferences. Some surveys are conducted as personal interviews by going door-to-door, leading focus group discussion, or setting up booths in public places such as shopping malls. Trained interviewers, under the market research analyst’s direction, usually conduct the surveys.

After compiling the data, market research analysts evaluate them and make recommendations to their client or employer based upon 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 may also 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 might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways . . . .

Because of the applicability of market research to many industries, market research analysts are employed in most industries....

The occupation of a market research analyst is a specialty occupation, normally requiring those seeking entry-level employment to have a master's degree in a related field. However, while the petitioner has identified its position as that of a market research analyst, its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention.

At the time of filing, the petitioner offered a generic description of the beneficiary's market research duties, one that appeared to describe the occupation of market research analyst rather than the position actually proposed in the petition. The director found this description insufficient to establish the position as a specialty occupation and asked the petitioner to provide further information, specifically requesting a "complete, detailed description of the *day-to-day* duties to be performed by the beneficiary. **If the beneficiary will be performing various duties, please indicate the percentages of time the beneficiary will spend performing each duty**" (emphasis in original). In response, counsel simply reiterated the original list of job duties that was provided in the initial filing offering no further elaboration other than the percentage of time the beneficiary would spend performing each duty. Counsel contended that this description established the proposed position as a specialty occupation. Counsel's only references to the beneficiary's role within the company were phrased in general terms, e.g., "collecting, examining, and analyzing statistical data," and "submitting analytical market reports to help promote domestic and international sales."

The similarity between the petitioner's description of its proposed position and the *Handbook's* discussion of the occupation of market research analyst is not a basis for approval. A petitioner cannot establish its proposed employment as a specialty occupation by simply describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., a market research analyst establishes research methodologies or performs market analyses. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

In the instant case, the petitioner has offered no description of the duties of its proposed position beyond the generalized outline it provided at the time of the initial filing. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). As noted previously, CIS must examine the actual employment of an alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. However, the petitioner's description of the duties of its position is so generic that it is not possible to identify those tasks and, therefore, whether the position is actually that of a market research analyst. Further, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation – employment requiring the theoretical and practical application of a body of highly specialized knowledge

and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the AAO finds the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary's services.

Therefore, the petitioner has failed to establish that its proposed position is a specialty occupation, and the director was correct to deny the petition.

Beyond the decision of the director, the AAO has determined that the beneficiary does not qualify to perform the duties of a market research analyst. As set forth in 8 C.F.R. § 214.2 (h)(4)(iii)(C), in order to qualify to perform the services of a specialty occupation an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary does not meet the first two criteria set forth at 8 C.F.R. § 214.2 (h)(4)(iii)(C). While the beneficiary does hold a bachelor's degree in international business from the University of Oregon, the AAO, consistent with the requirements set forth in the *Handbook*, has determined that a market research analyst position in the private sector requires a master's degree in a specific job-related specialty. While a bachelor's degree in marketing or a related field, according to the *Handbook*, may be sufficient for an entry-level position such as a research assistant, administrative or management trainee, marketing interviewer, or salesperson, the duties of a market research analyst are at a higher level and require greater expertise. Therefore, the beneficiary does not qualify under subsections (1) or (2).

It has never been asserted that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so she does not appear to qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), as she does not have the education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, as well as recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Thus, the beneficiary does not appear to meet the requirements set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3) or (4), as the record contains no evidence to satisfy any of those criteria.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the alien must have a baccalaureate degree followed by at least five years of experience in the specialty in order to demonstrate equivalency to a master's degree. It must be clearly demonstrated that the alien's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country;  
or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary earned her degree in December 2002. Thus, she would have to demonstrate that she had five years of experience, meeting the requirements delineated above, prior to the filing of the instant petition. However, the instant petition was filed in October 2003. Thus, even if the beneficiary's work experience between December 2002 and October 2003 were able to qualify under the substantive requirements delineated above, there would not be five years of qualifying experience. The beneficiary does not meet this threshold requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As the beneficiary does not meet the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3), (4), or (5), her eligibility to perform services in a specialty occupation cannot be established under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Therefore, none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C) have been satisfied, and the beneficiary does not qualify to perform the duties of a market research analyst. For this additional reason, the petition may not be approved.

The proposed position does not qualify for classification as a specialty occupation, and the beneficiary does not qualify to perform the duties of the specialty occupation had the position been determined to be a specialty occupation. Accordingly, the AAO will 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.