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## Hotel Co. Wins Reversal Of H-1B Visa Denial For Analyst

By **Allissa Wickham**

Law360, New York (January 15, 2015, 4:57 PM ET) -- A Washington federal judge on Wednesday overturned a decision by United States Citizenship and Immigration Services to deny a hotel operator's H-1B visa petition for a marketing analyst, ruling that the job qualifies as a specialty occupation under the agency's regulations.

U.S. District Judge Ricardo S. Martinez ruled that USCIS abused its discretion in denying a H-1B petition from Raj and Co., a hotel and gas station operator based in Yakima, Washington, which sought to employ a Fiji citizen as an analyst.

Specifically, the judge found that USCIS erred in denying the visa petition based on its finding that a market analyst position does not require a specialized bachelor's degree, which is one of the requirements the agency can use to determine whether a job is a specialty occupation.

"The patently specialized nature of the position sets it apart from those that merely require a generic degree," Judge Martinez wrote, later calling the agency's error "not a harmless one."

The dispute dates back to 2011, when Raj sought to employ Fiji citizen Rashna Kajal as a marketing analyst for three years, in order to help the company find opportunities to expand its hotel and convenience store operations throughout Washington, according to the opinion.

Kajal holds a bachelor's degree and a business marketing certificate from Brigham Young University in Hawaii, and submitted her education documents to USCIS, the order stated. USCIS subsequently asked for additional evidence about the company's business and its need for the marketing job, which the company allegedly did.

However, in October 2012, USCIS denied the hotel operator's H-1B visa application on the basis that Raj hadn't shown the marketing analyst position qualified as a specialty occupation, prompting the company to file a complaint in Washington federal court last January.

Raj argued that USCIS' decision wasn't supported by evidence, while the agency claimed it had acted within its discretion in finding that the company hadn't met any of the four regulatory criteria that qualifies a job as a specialty occupation, the opinion stated.

But Judge Martinez ruled Wednesday that USCIS took an improperly narrow approach in its decision finding that a market research position doesn't require a specialized bachelor's degree, as the agency's own regulatory criteria doesn't limit jobs qualifying as specialty occupations to those for which there is a "single, specifically tailored" program.

"Indeed, such an interpretation ignores the statutory and regulatory allowance for occupations that require the attainment of the 'equivalent' of specialized bachelor's degree as a threshold for entry," Judge Martinez wrote.

The judge found that the marketing analyst job requires either a specialized degree in "market research," or an equivalent technical degree, along with coursework in "statistics, research methods and marketing."

Judge Martinez therefore granted summary judgment to Raj, and ordered USCIS to grant the company's petition for H-B visa status.

"While judicial review of agency decisions is highly deferential, it is not without teeth," Judge Martinez noted near the end of the ruling.

William Frick, an attorney for Raj, told Law360 in an email Thursday that his team is "happy for our client and for other small businesses that this ruling might impact."

According to the opinion, the finding backs up a 2012 Ohio federal court ruling, which also found that the market research analyst position qualifies under USCIS' specialized degree or equivalent requirement for an H-1B visa.

A representative for USCIS and an attorney for Raj did not immediately respond to a request for comment Thursday.

Raj is represented by William Frick of the Law Office of William Frick.

USCIS is represented by Kristin Berger Johnson of the U.S. Attorney's Office in Seattle.

The case is Raj and Co. v. United States Citizenship and Immigration Services et al., case number 2:14-cv-00123, in the U.S. District Court for the Western District of Washington.

--Editing by Katherine Rautenberg.

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