

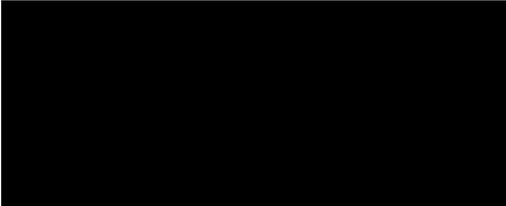
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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: EAC 02 219 51853 Office: VERMONT SERVICE CENTER Date: FEB 25 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, 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 is a travel agency that seeks to employ the beneficiary as a public relations coordinator. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and previously submitted evidence.

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.

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 proffered position.

The record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a public relations coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail managing client relations and company activities; supervising and coordinating client relations in bi-lingual settings; interfacing and negotiating with hotels, golf courses, and the press about tour packages and special promotions; researching customer complaints; negotiating contracts in various languages; ensuring clients know of product releases and advertising campaigns; conducting meetings in English and Japanese with potential clients and partners; researching and analyzing trends in the industry; acting as a spokesperson for the petitioner; reporting to management about strategies, promotions, and customer service relations; promoting musical and comedy groups from Japan. The petitioner indicated that a candidate must hold a baccalaureate degree in communications or a closely related major, or its equivalent, and have experience.

The director stated that 65 percent of the proposed duties, including supervising, coordinating, negotiating, giving presentations, researching, holding meetings, and serving as a spokesperson, do not fall within the description of a specialty occupation. The director stated that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) indicates that public relations specialists do not require a baccalaureate degree in a specific specialty, and further stated that many of the beneficiary's duties are not within the description of a public relations specialist. The director found the submitted letters and job postings unpersuasive. According to the director, no evidence supported the petitioner's assertion that a former employee filling the proffered position possessed a baccalaureate degree in communications. The director stated that even if the petitioner submitted this documentation, the court decision in *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000) states that CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. The critical element is not the title of the position or 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.

On appeal, the petitioner contends that the beneficiary's duties are performed by a public relations specialist as described in the *Handbook*; that the *Handbook* relays that "Many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communications"; and that the petitioner's educational requirements are consistent with the *Handbook*. The petitioner asserts that degree programs in universities are strong evidence that a baccalaureate degree is needed for the proffered position. The petitioner avers that CIS recognizes that if many universities offer a baccalaureate degree program in a particular discipline, this can determine whether an occupation associated with the discipline qualifies as a specialty occupation. It is undisputed, the petitioner maintains, that public relations and communications are considered advanced disciplines by many universities, and since the beneficiary's duties relate to the coursework in these areas, the proffered position qualifies as a specialty occupation. The petitioner states that the two industry letters establish an industry standard of a baccalaureate degree. The petitioner declares that it

has always required a baccalaureate degree in communications or a closely related field, or the equivalent in experience in order to perform the proffered position. The petitioner lists its employees, their job titles, and degrees and emphasizes that employees in the position of public relations coordinator or other specialty occupations possess a baccalaureate degree or the equivalent in work experience.

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 AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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)).

In determining whether a 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 *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states the following about the qualifications of public relations specialists:

There are no defined standards for entry into a public relations career. A college degree combined with public relations experience, usually gained through an internship, is considered excellent preparation for public relations work; in fact, internships are becoming vital to obtaining employment. The ability to communicate effectively is essential. Many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communication. Some firms seek college graduates who have worked in electronic or print journalism. Other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business—information technology, health, science, engineering, sales, or finance, for example.

Although the *Handbook* states "[m]any entry-level public relations specialists have a college major in public relations, journalism, advertising, or communication," it also reveals "[t]here are no defined standards for entry into a public relations career." Read in totality, the *Handbook* indicates that many entry-level public

relations specialists may possess a bachelor's degree in certain fields; nonetheless, employers do not *require* candidates to possess a bachelor's degree in a specific specialty for a career in public relations. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, public relations coordinator.

The petitioner's observations regarding baccalaureate degree programs in public relations and communications is not persuasive in establishing that the proffered position is a specialty occupation. Such an observation has no relevance in establishing the employment practices of organizations. Furthermore, there is no evidence in the record to support the petitioner's assertion that CIS recognizes that if many universities offer a degree program in a particular discipline, this can determine whether an occupation is a specialty occupation. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner refers to job postings and letters. There is no evidence, however, to show that the employers issuing the postings are similar to the petitioner, a small travel agency. Advertisers include National Cancer Organization, a health care organization; Fresh Direct, a grocery company; Samsung Semiconductor, Inc., a technology company; SportsCareers.com, a sports organization; law firms; and a consulting firm. Thus, the advertisements have little relevance.

The letters from IACE Travel, Inc. and Amnet New York, Inc. are relevant, though the authors provide no independent evidence to corroborate their assertions of an industry-wide requirement of a baccalaureate degree in communications or a closely related major. The president of IACE Travel, Inc. stated that his company employs a few employees who are in the same or similar position as a public relations coordinator and that they all hold a bachelor's degree in communications or other liberal arts fields. The president of Amnet New York, Inc. stated that their public relations coordinator holds a baccalaureate degree in sociology, which is closely related to the field of communications. The statements of the presidents reveal employers do not *require* candidates to possess a bachelor's degree in a specific specialty for the proffered position: they accept various degrees in the liberal arts field.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for public relations specialists.

The petitioner asserts that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The director correctly observed that no independent evidence corroborated this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, the director properly referenced the case of *Defensor v. Meissner*. In the case, the court stated that the ultimate employment of the alien must be examined to determine whether the position qualifies as a specialty occupation. The critical element is not the title of the position or 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.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. Based on the *Handbook's* information, the proffered position is performed by a public relations specialist, an occupation that does not require a specific baccalaureate degree.

The petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that the petitioner establish that the nature of the specific duties 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. As already discussed, the *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for public relations specialists.

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.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.