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**U.S. Citizenship
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Services**



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FILE: WAC 02 246 50187

Office: CALIFORNIA SERVICE CENTER

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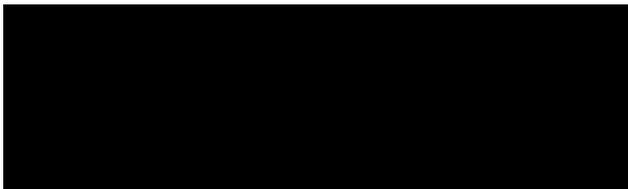
Petitioner:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: 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 moving and relocation-services company that seeks to employ the beneficiary as a communications specialist. The petitioner 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 supporting materials.

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.

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; (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 communications specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 26, 2002 letter in support of the petition; and the petitioner's May 15, 2003 response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: conducting public relations and good-will campaigns and evaluating their results; producing a monthly newsletter; promotional "networking"; doing market research and placing ads; preparing news releases and contacting media outlets; and recommending ways to improve the petitioner's image.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director equated the position to that of a public relations specialist and noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty.

On appeal, counsel states that the director failed to apply the correct standards to the proffered position and to fully understand the unique complexity and the level of authority of the job that warrants classifying it as a specialty occupation. According to counsel, the director "read the job duties and made a judgment call that anyone can perform these duties," as to which he cited the "extremely complex task" of planning a communications plan requiring several weeks' research "identifying audiences and sub-audiences, constructing appropriate messages for each audience, determining the technique of message presentation, designing strategies..., selecting tactics... et cetera."

Counsel also concluded the proffered position is a "Job Zone 4" occupation (referring to the Department of Labor's *O*Net*), which requires a degree. Counsel states further that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 7, which "requires at least a combination of work experience and education of over two years up to and including four years."

Finally, counsel cites *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966), and *Matter of Portugues Do Atlantico Information Bureau*, 19 I&N Dec. 194 (BIA 1984) in asserting that the director did not follow the governing laws, regulations and court precedents. He also cites a 1988 federal court case for the Northern District of California and cites a decision of the legacy INS office for classifying a marketing position as a specialty occupation.

Counsel's reliance on *Matter of Portugues* and *Matter of Shin* is misplaced. In *Portugues*, the Board of Immigration Appeals acknowledged that experience could be the equivalent of education but found that the position did not require knowledge of law or finances and was not a professional position. In *Shin*, the District Director states, "The mere acquisition of a degree or equivalent experience does not, of itself, qualify a person as a member of a 'profession.' The knowledge acquired must also be of [a] nature that is a realistic prerequisite to entry into the particular field of endeavor." The case cited by the petitioner, *Hong Kong T.V. Video Program Inc. v. Ilchert*, 685 F.Supp. 712 (N.D. Cal. 1988), held that the position of company president is a profession. None of these cases lead the AAO to conclude that the proffered position meets any of the regulatory requirements for a specialty occupation.

The AAO's unpublished decision referred to by counsel holding that a marketing position is a specialty occupation is not persuasive in this case. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Further, unpublished decisions are not precedent decisions and are not binding on CIS employees in the administration of the Act. 8 C.F.R. § 103.3(c).

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 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. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the Public Relations Specialist and Writers and Editors job descriptions in the *Handbook* confirms that there is no evidence in the *Handbook* that a baccalaureate or higher degree, or its equivalent, in a specific specialty is required for the proffered position.

Counsel's reference to and assertions about the relevance of information from *O*Net* and the *DOT* are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Counsel's comments regarding the type of credentials required for the proffered position in the petitioner's industry are without merit. Counsel's personal observations do not constitute evidence in these proceedings. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The director concluded correctly that the proffered position is one of a public relations specialist -- a term the *Handbook* uses interchangeably with such other fields as marketing manager or coordinator, and other similar occupations -- that does not require a baccalaureate degree, or its equivalent, in a specific specialty. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for public relations, marketing assistant and government public affairs specialists, each of which required a bachelor's degree. 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 government position, with many specific requirements, is not representative of the industry. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, 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. On appeal, counsel states that all of the petitioner's employees hold degrees, including the person who the beneficiary would replace. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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. 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.