

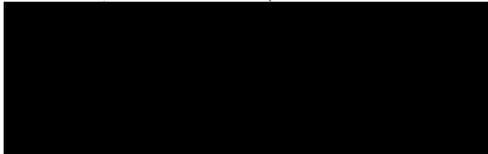
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U.S. Citizenship
and Immigration
Services

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FILE: SRC 05 128 52339 Office: TEXAS SERVICE CENTER Date: FEB 26 2007

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:
[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner avers it is an accounting and financial recruiting firm, with 18 employees, and an approximate \$3.3 million in gross income. It seeks to employ the beneficiary as a public relations specialist. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the April 1, 2005 Form I-129 and supporting documentation; (2) the director's April 11, 2005 request for further evidence (RFE); (3) the petitioner's April 18, 2005 response to the director's RFE; (4) the director's July 19, 2005 denial letter; and (5) the Form I-290B, with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a public relations specialist. The petitioner stated in a March 14, 2005 letter appended to the petition:

The position of Public Relations Specialist involves engaging in promoting and creating good will for our company by writing and selecting favorable publicity materials with respect to the company's newsletter and website, and release favorable publicity throughout the business community and perform related publicity efforts including attending career fairs. The minimum requirement for the position is [a] bachelor's degree in journalism.

In response to the director's April 11, 2005 RFE, the petitioner noted that it had 16 employees, that in the past it had used a part-time contract professional for its public relations needs, and that the beneficiary would be its first employee in the position. The petitioner also noted that public relations specialists generally have degrees in this specialty, that the position involves developing the company's image with both recent college graduates with accounting and finance degrees and experienced professionals looking to change careers, and that virtually everyone the company deals with has a professional degree. The petitioner also provided an excerpt from the Department of Labor's online website, *O*NET* regarding the occupation of public relations specialists that noted most of the occupations required a four-year bachelor's degree but some do not as well as identifying an SVP rating of 7 or 8 for the occupation.

On July 19, 2005, the director denied the petition acknowledging the petitioner's submission of the excerpt from *O*NET* but determining that the petitioner had not established that a bachelor's degree is common to the industry in parallel positions among similar organizations, or that the position is so complex or unique that it can only be performed by an individual with a degree. The director concluded that the evidence submitted did not establish that the proffered position satisfied the criteria for a specialty occupation.

On appeal, counsel for the petitioner asserts that the usual minimum requirement for the occupation is a bachelor's degree and that the employer normally requires a bachelor's degree for the position. Counsel submits five job announcements for: (1) a senior account executive public relations position offered by a public relations agency that indicated the "desired" education level as a bachelor's degree; (2) a public relations coordinator – media specialist for an international law firm listing a bachelor's degree in an unspecified discipline in the education field; (3) an

entry-level marketing, public relations, advertising, sales position for a sales and marketing firm listing the desired education level as an associate's degree; (4) a public relations specialist for a company involved in space and missile defense technologies, requiring a bachelor's degree, and (5) a public relations coordinator for a healthcare system indicating an undergraduate degree in public relations, communications or business administration or master's degree in these fields is desirable.

To make its determination whether the employment described above qualifies as a specialty occupation, the AAO first turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely relies on the *Handbook* for the educational requirements of particular occupations.

Preliminarily, the AAO notes that *DOT* and the *Handbook* are two separate sources of information on occupations. While the AAO routinely consults the *Handbook* for educational requirements of particular occupations, it does not consider the *DOT* or its online incarnation, *O*NET*, to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *O*NET* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require.

The *Handbook* reports the following regarding the occupation of a public relations specialist:

An organization's reputation, profitability, and even its continued existence can depend on the degree to which its targeted 'publics' support its goals and policies. Public relations specialists -- also referred to as communications specialists and media specialists, among other titles -- serve as advocates for businesses, nonprofit associations, universities, hospitals, and other organizations, and build and maintain positive relationships with the public.

* * *

Public relations specialists handle organizational functions such as media; community, consumer, industry, and governmental relations; political campaigns; interest-group representation; conflict mediation; or employee and investor relations.

* * *

Public relations specialists draft press releases, and contact people in the media who might print or broadcast their material. Many radio or television special reports, newspaper stories, and magazine articles start at the desks of public relations specialists.

* * *

People who handle publicity for an individual or who direct public relations for a small organization may deal with all aspects of the job. They contact people, plan and research, and

prepare material for distribution. They also may handle advertising or sales promotion work to support marketing efforts.

To identify the educational requirements for employment as a public relations specialist, the AAO turns again to the *Handbook*, which states:

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 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

While the *Handbook* discusses both the types of degrees that may prepare individuals to seek employment as public relations specialists and the degree preferences of certain employers when seeking public relations specialists, it does not indicate that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the occupation. The fact that many individuals who seek employment as public relations specialists have bachelor's degrees in related fields and that some employers prefer to hire such individuals for their public relations openings does not satisfy the degree requirement set forth in the first criterion. Employer preference is not synonymous with the "normally required" language of the criterion. Thus, the AAO concludes that the petitioner has not established that the position of a public relations specialist is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. The AAO has reviewed the five job announcements submitted on appeal and finds that the job announcements do not provide sufficient information to enable the AAO to conclude that the businesses advertising the positions are similar to the petitioner in size, number of employees, or level of business. Going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). Moreover, although the petitioner's brief description of the proffered position's duties contains some of the elements of the jobs advertised, the AAO cannot conclude that the proffered position is sufficiently similar to the jobs advertised to determine that the positions are parallel. The job advertisements provide a range of various responsibilities while the petitioner provided only a brief, general description of the proffered position's employment. Without a more comprehensive description of the responsibilities of the proffered position, the AAO cannot find that the petitioner's position is parallel to those positions advertised. In addition, the AAO notes that one of the job announcements for an entry-level position requires only an associate's degree. Further one job announcement indicates that a bachelor's degree is desired and three of the four job announcements listing a bachelor's degree do not specify a particular field of study as required. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may establish that the proffered position is so complex or unique that only an individual with a degree may perform the duties of the position. Upon review of the brief description of duties of the proffered position, the AAO does not find that the proposed duties of the position are distinguishable, by their unique nature or complexity, from a similar but non-degree-requiring position. The employer has not established that its particular position is so complex or unique that only an individual with a degree can perform the position. Accordingly, the petitioner has not established its position as a specialty occupation under either of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether the employer normally requires a degree or its equivalent for the position. The petitioner indicates that it had not employed an individual in this position in the past but contends that it requires an individual with a bachelor's degree in a communication medium. However, the petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is 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. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. The AAO acknowledges the petitioner's claim that most of its employees hold degrees in their professional fields. However, other employees holding bachelor's degrees in their respective fields of endeavor does not establish that the proffered position requires a degree in a specialty. Moreover, the AAO notes that the petitioner has not substantiated its claim with documentary evidence, such as college diplomas, lists of duties pertaining to the position held, or other information substantiating that its other employees hold positions requiring baccalaureate degrees in their respective specialty. Again, going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Accordingly, the AAO finds that proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), whether 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. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has again reviewed the duties of the proffered position, as described by the petitioner to determine whether they reflect a higher degree of knowledge and skill than would normally be required of a public relations specialist or represent an amalgam of jobs that require different skills and qualifications. Having reviewed the brief statement of duties of the proffered position, the AAO does not find any evidence in the record to show that the responsibilities of the proffered position require greater knowledge or skill than that routinely needed by public relations specialists who work in demanding and complex situations to promote the goals of the businesses employing them. Further, the job, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills not normally possessed by a public relations specialist. As a result, the AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reason. As always, 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 met that burden.

ORDER: The appeal is dismissed. The petition is denied.