

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY



DI

FILE: EAC 02 165 50682 Office: VERMONT SERVICE CENTER Date: JAN 05 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:

SELF-REPRESENTED

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 construction company that seeks to employ the beneficiary as a public relations manager. 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 additional 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 manager. 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 promoting marketing objectives; researching new opportunities for growth; participating in the company's corporate public relations activities; managing contracts; writing press releases; revising documentation prepared by technical writers; communicating with trade and business press editors; managing 20 employees; and planning and attending press events. The petitioner stated that the beneficiary is qualified for the proffered position based on his master's degree in journalism from Leningrad State Institute, and his work experience.

The director determined that the proffered position was not a specialty occupation. According to the director, even though the beneficiary allegedly volunteered for the petitioner as a public relations manager, the petitioner failed to submit requested evidence that would establish that the beneficiary will perform public relations duties. The director found the job posting from Adecco unpersuasive in establishing a specific bachelor's degree requirement in the industry. The director determined that the submitted resumes from persons seeking positions in fields other than public relations were not relevant in demonstrating that the petitioner normally requires a bachelor's degree for the proffered position.

On appeal, the petitioner alleges that the beneficiary, on a voluntary basis, has negotiated and secured two major contracts for the petitioner. According to the petitioner, the beneficiary has experience as a public relations manager, and is knowledgeable in the Russian, Armenian, English, and German languages. The petitioner states that the beneficiary will review and revise documents prepared by technical writers, communicate with trade and business press editors, negotiate contracts, draft speeches, and arrange interviews in his capacity as a public relations manager.

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 or its equivalent in a specific specialty 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 Department of Labor's (DOL) *Occupational Outlook Handbook* (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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

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 petitioner states that public relations managers perform the duties of the proffered position. The petitioner submits evidence from the *Handbook* describing public relations managers and public relations specialists.

A review of the *Handbook* discloses that a bachelor's degree in a specific specialty is not required for either a public relations manager or a public relations specialist. For public relations managers, the *Handbook* indicates:

[A] wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable.

Specifically for public relations management positions, the *Handbook* reports "some employers prefer a bachelor's or master's degree in public relations or journalism."

For public relations specialists, the *Handbook* reveals:

[T]here 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.

As previously stated, section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires 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 in the United States. Furthermore, 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.

Because the *Handbook* reveals that only some employers prefer, but do not require, a bachelor's degree in public relations or journalism for a position in public relations management, and that employers do not require a bachelor's degree in a specific specialty for a job as a public relations specialist, 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 manager.

The AAO notes that some of the beneficiary's duties such as managing contracts and researching new opportunities for growth are not performed by public relations managers or public relations specialists.

The submitted job postings fail to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. Neither of the organizations in the two postings is similar in nature to the petitioner, a small construction company. One posting sought a public relations manager for the 2004 International VSA Arts festival. The second posting sought a public relations manager for Adecco, a staffing services company with over 5,000 branches in 58 countries. Thus, the petitioner fails to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

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* describes public relations manager and public relation specialist jobs as not requiring a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The director correctly pointed out that the submitted resumes were irrelevant in establishing that the petitioner normally requires a degree or its equivalent in a specific specialty for the position

The petitioner fails to satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that it 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 in a specific specialty. The submitted construction agreements, photos, and bank statements are irrelevant in establishing the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A); they do not relate to the duties performed by a public relations manager or a public relations specialist. Because the petitioner failed to submit a certified translation of one document, a brochure, the AAO cannot determine whether it supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, this document is not probative and will not be accorded any weight in this proceeding. As previously stated, the *Handbook* relays that public relations managers and public relations specialists do not require a bachelor's degree in a specific specialty.

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.