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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: WAC 99 118 51348 Office: California Service Center

Date: APR 04 2001

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwanted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a supplier and wholesaler of medical supplies and orthopedic shoes. It seeks to employ the beneficiary as a public relations specialist for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel argues that the director did not give enough consideration to the documentation submitted by the petitioner. Counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i) (1) of the Act, 8 U.S.C. 1184(i) (1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i) (2) of the Act, 8 U.S.C. 1184(i) (2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h) (4) (iii) (B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and

3. Evidence that the alien qualifies to perform services in the specialty occupation.

The record contains an approved labor condition application. However, the application was certified on April 21, 1999, a date subsequent to March 15, 1999, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. Since this has not occurred, it is concluded that the petition may not be approved for this additional reason.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary earned a Bachelor of Arts degree in 1998 from Ateneo de Manila University in the Philippines. The beneficiary's foreign education has been found by a credentials evaluation services to be equivalent to a bachelor's degree in interdisciplinary studies in social science, with a concentration in media communication from a regionally accredited institution in the United States. It is concluded that the beneficiary qualifies to perform the duties of the offered position.

The term "specialty occupation" is 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.

The duties of the offered position are described in pertinent part as follows:

Initially, the position will require the individual to develop strategies that will enable this company to become better-known not only among the public, but among other retail establishments who might consider carrying our specialized products, as well. In short, this will require Mr. Aguila to initiate a series of seminars at varied locations that will inform those attending about the nature of our prosthetics, footwear, orthotics, and medical supplies. These seminars, in turn, will be formatted into particular segments that will allow the listener to learn about the latest developments in our field, coupled with future trends in the industry. In conjunction with these seminars, a series of brochures and pamphlets will have to be prepared by our Public Relations Specialist in a variety of formats depending upon which group will be attending the seminar.

At the same time, in order for us to obtain greater exposure, we have also requested the services of an in-house Public Relations Specialist who will be responsible for preparing press releases on our behalf, as well as magazine articles about this company, which will be submitted to various trade journals in industries with which our products might penetrate. Moreover, our Public Relations Specialist will further be required to prepare media packets for both radio and television markets in order to better-promote our products.

The petitioner has provided three letters from individuals knowledgeable in the public relations field. The first letter states that the usual requirement for employment as a public relations specialist is a bachelor's degree in English or a communications-related field such as journalism or communications studies. The second letter finds that individuals selected for entry-level positions in the field of public relations are usually graduates who possess a minimum of a bachelor's degree in English, fine arts, communications or journalism. The third writer asserts that employers in the public relations field normally require prospective public relations specialists to possess a bachelor's degree in communications, journalism, English, social science, or other related field. Although the three letters indicate the degrees that the writers consider appropriate for the offered position, this evidence is insufficient to show that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position of public relations specialist on an industry-wide basis.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions.

In these proceedings, the duties of the position are dispositive and not the job title. The offered position combines the duties of a public relations specialist with those of a public relations or advertising manager. The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 242-243 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a public relations specialist. Although 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. It is noted that a particular major subject does not appear to be an important consideration.

The Handbook at page 26 also finds no requirement of a baccalaureate degree in a specialized area for employment as a public relations or advertising manager. A wide range of educational backgrounds are considered suitable for entry into marketing or advertising managerial positions. Some employers prefer degrees in business administration but bachelor's degrees in various liberal arts fields are also acceptable. Here again, certain personal qualities and participation in company training programs are often considered as significant as the beneficiary's specific educational background. It is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.