



D2

U.S. Department of Justice

Immigration and Naturalization Service

**PUBLIC COPY**

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



File: WAC-01-066-51523 Office: California Service Center

Date: 16 DEC 2002

IN RE: 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)

IN BEHALF OF PETITIONER:



**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**INSTRUCTIONS:**

This is the decision 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.

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 that 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 that 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, Director  
Administrative Appeals Office

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

The petitioner is a business providing wholesale travel and travel consolidation services with thirteen employees and a stated gross annual income in excess of \$10 million. It seeks to employ the beneficiary as a public relations specialist for a period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

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.

The director concluded that the petitioner had failed to establish that the proffered position is a specialty occupation. On appeal, counsel argues that the proffered position of a public relations specialist is a specialty occupation. Counsel asserts that the Department of Labor's (DOL) Occupational Outlook Handbook, (Handbook) indicates that employers prefer to employ an individual with a college degree in the position of a public relations specialist.

Counsel's statements on appeal are not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the proffered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Plan and conduct public relations program designed to promote goodwill, increase sales and lay the groundwork to expand operations in the Bay area. Conduct series of marketing reports covering such areas as competitive business, demographic profiles and trends, income and

buying power of "targeted publics[.]" Liaise and establish contacts with institutions, newspapers, radio and TV to market services. Coordinate production of TV ads, on-air promotions and print ads. Prepare fact sheets and news releases and distributes same to media & institutional contacts. Attend industry meetings and functions to keep abreast of industry trends as input to publicity efforts.

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 petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding.

In these proceedings, the duties of the position are dispositive and not the job title. The duties of the offered position appear to combine those of a public relations specialist with those of a public relations manager, marketing manager, and an advertising manager. The DOL states in the Handbook, 2002-2003 edition at pages 141-144, that 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. Although the Handbook indicates that many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communications, other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business such as science, engineering, sales, or finance.

A review of the Handbook also finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in public relations, marketing, and advertising managerial jobs. A wide range of educational backgrounds are suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

Counsel submits six job advertisements for various public relations jobs. However, none of the advertisements pertains to a position with a business providing wholesale travel and travel consolidation services, rather the advertisements are from companies providing computer and telecommunication products and services. Furthermore, while two of the prospective employers indicate that a bachelor's degree is required, these two employers do not state that a degree in a specific specialty is required. The four remaining job advertisements are not sufficient to establish that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the proffered position.

Finally, the petitioner has not submitted any evidence to demonstrate that 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 petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, 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.