



D2

U.S. Department of Justice
Immigration and Naturalization Service

...including data deleted to
prevent clearly unwarranted
invasion of personal privacy.

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



File: EAC 01 034 52316 Office: Vermont Service Center Date: 15 FEB 2002

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: SELF-REPRESENTED

PUBLIC COPY

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, Director
Administrative Appeals Office

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

The petitioner is a real estate management firm with 25 employees and a gross annual income of \$880,000. It seeks to employ the beneficiary as a public relations representative for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, the petitioner states the director erred in failing to consider the uniqueness and complexity of the position, by ignoring newspaper advertisements and certified English translation that were previously provided and in interpreting the "DOT" standards with respect to occupations in public relations. The petitioner further states that the director erred in ignoring the letter from the president of the local multiple listing service and in overemphasizing the small size of the company.

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)(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 received a Certificate of Graduation in Industrial Foreign Trade from the Harbin Institute of Technology in 1991. An educational evaluation found the beneficiary degree to be the equivalent to a bachelor's degree in International Business in the United States.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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 petitioner described the duties of the offered position as:

1) planning for the communication programs to promote company products and services to related parties; 2) writing articles and hosting exhibits in Chinese to keep Chinese community informed of company agenda; 3) handling clients' complaints and collecting public opinions or feedback for company services and products; 4) assisting in policy decision making in business and management.

██████████ responsibility includes planning for the communication programs and hosting exhibits in Chinese to keep Chinese community informed of company agenda. Such a planning and hosting involves keeping informed of public data and using marketing, communication, and

promotional knowledge. Similarly, assisting in policy decision making in business and management and handling clients' complaints require one to utilize knowledge and experiences in business, administration and counseling management.

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.

On appeal, the petitioner states that the Dictionary of Occupational Titles (DOT) issued by the Department of Labor (DOL) indicates that the SVP level for the same job title of public relations representative is 7, which requires bachelor's training.

The latest edition of DOL's DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by DOL in the various editions of the Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

The offered position combines the duties of a public relations manager, marketing manager and advertising manager. A review of DOL's Handbook, 2000-2001 edition, at pages 25-26 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a public relations, marketing, or advertising manager. A wide range of educational backgrounds are considered suitable for entry into public relations, marketing, and advertising managerial positions. Some employers prefer a bachelor's or master's degree in public relations or journalism,

but bachelor's degrees in various liberal arts fields are also acceptable. In addition, 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 petitioner has failed to submit any evidence to establish that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position.

The petitioner presents a letter from a firm that lists real estate properties for companies in the Flushing, New York area in an attempt to show the offered position requires the incumbent to have a bachelor's degree as well as Chinese and English language skills. The petitioner also submits several newspaper and internet advertisements for public relations positions. The letter from the multiple listing service asserts that the public service representative in this case is required to have a bachelor's degree. However, no evidence to support this assertion is forthcoming. Additionally, most of the advertisements indicate that a baccalaureate in any field would qualify an individual for a public relations position. It is determined that the petitioner has not shown that the nature of the beneficiary's proposed 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.

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.