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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



JAN 14 2002

File: WAC-00-062-50803 Office: California Service Center Date:

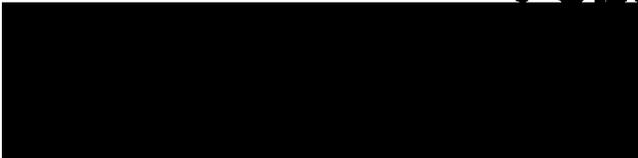
IN RE: Petitioner:  
Beneficiary:



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)

**PUBLIC COPY**

IN BEHALF OF PETITIONER:



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, California Service Center. The director subsequently reopened the case and denied the petition again. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a testing laboratory and quality control agency with 60 employees and a gross annual income of \$5 million. 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 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 most closely resembles that of a "public relations specialist" as described in the Department of Labor's Occupational Outlook Handbook, (Handbook), 2000-2001 edition. Counsel asserts that the Handbook indicates that employers prefer an individual with a college degree in a business related field for a position as a public relations specialist.

Counsel's statement on appeal is 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 the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will act as a liaison between the company and the public as well as between the company and its employees by disseminating facts and information

about the company's activities. He would additionally be required to represent the company in trade shows and assist in preparing film, slide and visual presentations.

[The beneficiary's] responsibilities will include writing copy, preparing artwork and finished advertising/communication pieces with a view to enhance and further [the company's] corporate image and identity. He would negotiate and purchase advertising space in trade publications and monitor them as required. [The beneficiary] will be responsible for maintaining the company's web site and posting design and information updates. He will also design and lay out, edit, contribute to and coordinate the company's newsletter.

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 offered position appears to be that of a public relations specialist. In its Handbook, 2000-2001 edition, at pages 241-243, the Department of Labor does not state that a baccalaureate or higher degree in a specialized area is required for employment as a public relations specialist. 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.

Counsel submits a letter from Roger S. Faubel, co-owner of the public relations firm Waters & Faubel, Inc. Mr. Faubel states in part that a position as a public relations specialist normally requires a bachelor's degree in advertising or public relations. The submission of this one letter is not sufficient evidence to support the petitioner's assertion that a position as a public relations representative requires a bachelor's degree in a specialized area. As such, the record indicates that while a baccalaureate degree is often required for public relations positions, there is no indication that a degree in a specialized area is required.

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 proffered position.

Counsel submits nine job advertisements for various public relations jobs. None of the advertisements pertains to a position with a testing laboratory. Three of the prospective employers indicate that a bachelor's degree is required, but they do not specify that a degree in a specialized area is required. Furthermore, nine job advertisements are not sufficient to establish that the degree requirement is common to the industry in parallel positions among similar organizations.

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 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.