



DA

U.S. Department of Justice

Immigration and Naturalization Service

Identifying 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



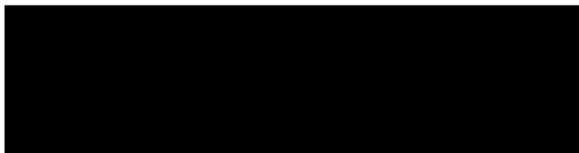
File: WAC-02-039-51173 Office: California Service Center

Date: NOV - 8 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:



PUBLIC COPY

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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a hotel/motel services business with 10 employees and a gross annual income of \$850,000. It seeks to employ the beneficiary as a public relations specialist/journalist 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 submits a brief and additional documentation.

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 the classification of qualified nonimmigrant 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 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.

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 determined that the petitioner had failed to establish that a baccalaureate degree in a specific specialty is the normal minimum requirement for entry into the occupation or that the degree requirement is common to the industry in parallel positions among similar organizations.

On appeal, counsel asserts that a baccalaureate degree is the normal minimum requirement for entry into the position of public relations specialist. Counsel further asserts that the degree requirement is common to the industry in parallel positions among similar organizations and that the duties of the position are so specialized and complex that the knowledge required to perform the duties is normally associated with the attainment of a baccalaureate degree in a specific specialty.

Counsel's assertions 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 offered 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 in pertinent part as follows:

As a Public Relations Specialist/Journalist, [the beneficiary] will develop and implement communication strategies and information programs, publicize activities and events, and maintain media relations on behalf of our company.

Further, [the beneficiary] will coordinate development of reference manuals with our management. She will edit publication drafts to ensure adherence to adopted publications style and standards. She will research, develop and manage publication of reference manuals our company needs for training current and future employees.

* * *

[The beneficiary] will evaluate suitability of manuscripts, articles, news copy and wire service dispatches for publication or broadcast and they recommend or make changes in content, style and organization. She will read and edit copy to be published or broadcast in order to detect and correct errors in spelling, grammar and syntax. . .

Furthermore, [the beneficiary] will develop, implement and evaluate communications strategies and programs designed to inform clients, employees and the general public of our company policies. She will gather, research and edit materials for internal and external audiences, prepare and oversee preparation of reports, briefs, bibliographies, speeches, presentations and press releases. She will likewise develop and organize workshops, meetings, ceremonies and other events for publicity, fund raising and information purposes.

Moreover, [the beneficiary] will initiate and maintain contact with the media, arrange interviews and news conferences and prepare management to speak on behalf of an organization, answer written and oral inquiries for management, facilitate two-way communication between an organization and the public, and assist in the preparation of brochures, reports, newsletters and other materials.

In instances wherein our office needs to conduct a press conference, [the beneficiary] will correspond with the members of the press and facilitate the said event. She will prepare media kits and answer issues on behalf of our company. Representing our company during community projects and at public, social and business gatherings will also be part of [the beneficiary's] tasks.

Additionally, [the beneficiary] will strive to build and maintain positive relationships with both internal and external public. . . . To address both groups' concerns, we shall be publishing a quarterly newsletter where our employees, clients and business associates can be updated with our services.

[The beneficiary] will oversee production of our newsletter. She will provide a name for the newsletter, conduct research, write articles. . . .

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.

The Service does not agree with counsel's argument that the Department of Labor (DOL) indicates in both the Occupational Outlook Handbook and the Dictionary of Occupational Titles that the position of public relations specialist is a specialty occupation. Counsel incorrectly asserts that the Handbook, 2000-2001 edition, states that most public relations specialist positions require a bachelor's degree in communications or a related field. The DOL's description of the educational requirements for a public relations specialist position is essentially the same in both the 2000-2001 and the 2002-2003 editions of the Handbook. According to both editions of the Handbook, 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. The 2002-2003 edition of the Handbook further states that internships are, in fact, becoming vital to obtaining employment. The ability to write and speak well is also essential. Although many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communications, some firms seek college graduates who have worked in electronic or print journalism. Other employers seek applicants with demonstrated communications skills and training or experience in a field related to the firm's business. . .

Counsel argues that there is nothing in the Handbook to indicate that employees who go through training programs for public relations specialist positions do so in lieu of obtaining a bachelor's degree in communications or a related field. However, the Handbook only makes reference to "a college degree" combined with public relations experience gained through a training program. Nowhere in the Handbook does the DOL state that the college degree must be in a specific specialty for entry into the occupation of public relations specialist.

Furthermore, a reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the 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.

Counsel asserts that the degree requirement is common to the industry in parallel positions among similar organizations. In support of this assertion, counsel submits seven internet job advertisements for public relations specialist positions. Analysis of the advertisements reveals that four of these prospective employers require a bachelor's degree in a communications-related field and three require a bachelor's degree, no major area specified, plus several years of public relations experience. As such, these advertisements do not show that the degree requirement is common to parallel positions among similar organizations. Furthermore, four advertisements do not demonstrate an industry standard.

Counsel asserts on appeal that the petitioner requires a baccalaureate degree in communications for the proffered position. However, counsel has not submitted any evidence to show that the degree requirement is part of the hiring process. It was held in Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988) and Matter of Ramirez-Sanchez, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

Finally, the petitioner has not submitted any evidence to demonstrate that the duties of the proffered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty is the minimum requirement for employment as a public relations specialist.

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.