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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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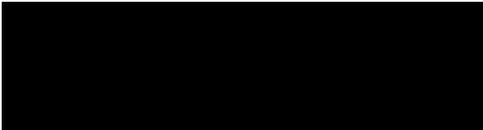
File: WAC-01-227-55132 Office: California Service Center

Date: **SEP 30 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:



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. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a company engaged in residential and commercial property management, development, and leasing services. It has 44 employees and a gross annual income of \$2,200,000. The petitioner 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 proffered position is a specialty occupation.

On appeal, counsel submits a brief and supporting documentation.

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.

8 C.F.R. 214.2(h)(4)(ii) further 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 director concluded that the petitioner had failed to establish that the offered position is so complex or unique as to require at least a baccalaureate degree in a specific field of study.

On appeal, counsel argues that the Department of Labor (DOL) has determined in its Dictionary of Occupational Titles (DOT) that the proffered position of public relations specialist is a specialty occupation. Counsel further argues that the degree requirement is common to the industry in parallel positions among similar organizations and that the employer normally requires a bachelor's degree in a specific field of study for the proffered position.

Counsel's arguments 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 the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary's] responsibilities will include implementing integrated public relations campaigns, client-related and new business research. She will generate and update our media lists. She will develop company news stories for the public in the form of press releases and feature stories.

She will prepare daily clips - read the newspapers and compile a digest of clips pertaining to the industry. Her duties would also include designing advertisements, brochures and company flyers.

Further, [the beneficiary] will support research, development and publication of company materials. She will plan, organize and respond to public inquiries about our company.

Moreover, her duties likewise include involvement in the following areas: issue management, crisis communications, local government and community relations, materials and media relations.

[The beneficiary] will also devote time in implementing a system that will be available to other Public Relations Specialists at the end of her stay.

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.

Counsel asserts that the DOL has determined in its Dictionary of Occupational Titles (DOT) that the position of public relations specialist requires a bachelor's degree in a specific field of study. However, a reference in the Department of Labor'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 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 Department of Labor 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. Thus, counsel has not shown that a bachelor's degree in a specific field of study is a minimum requirement for entry into the field.

In these proceedings, the duties of the position are dispositive and not the job title. 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.

In response to a Service request for additional evidence, the petitioner submitted an occupational guide to the occupation of public relations representative from the California Employment Development Department website. According to this document, a college degree combined with public relations experience, usually gained through an internship, is considered to be excellent training for public relations work. This document supports the DOL's finding in the Handbook that a bachelor's

degree plus experience gained through an internship is the normal preparation for entry into the occupation.

Counsel asserts that the degree requirement is standard to the industry in parallel positions among similar organizations. In support of this assertion, counsel submits seven job advertisements for various public relations jobs. Only one of the advertisements pertains to a position with a property management company. Two of the prospective employers indicate that a bachelor's degree is required, but they do not specify that the degree must be in a specific field of study. Furthermore, seven job advertisements are not sufficient to demonstrate an industry standard. Thus, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

On appeal, counsel states that the petitioner usually requires a bachelor's degree for the position of public relations specialist. In support of this statement, counsel submits the petitioner's internet advertisement for the proffered position. According to the advertisement, the job requires the following: strong people, writing and phone skills; PC literacy; ability to work with minimal supervision; and a bachelor's degree. While it appears that the petitioner requires a bachelor's degree for the offered position, the evidence of record does not support a finding that the petitioner requires a bachelor's degree in a specific field of study such as marketing communications or a related field for the 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 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.