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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536

[redacted]

File: SRC 02 011 55114 Office: TEXAS SERVICE CENTER Date: APR 14 2003

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida public events coordination company that has one employee and $30,403 identified as liabilities and equity as of August 31, 2001. It seeks to temporarily employ the beneficiary as a public relations manager and events coordinator for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the proffered position is a specialty occupation because the degree requirement is common in parallel positions among similar companies.

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 field 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.

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 issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation. In the original petition received by the Texas Service Center on October 1, 2001, the petitioner described the position as public relations manager and events coordinator, and explained the duties of the proffered position as follows:

> Plans and conducts public relations designe[d] to create and maintain favorable public image for [the petitioner].
>
> Plans, and directs development and communication of information designed to keep the public informed of [the petitioner's] programs, accomplishments, or point of view.
>
> Arranges for public relations efforts in order to meet needs, objectives and policies of [the petitioner].
>
> Represents [the petitioner] during community projects and at public, social, and business gatherings.
>
> May research data, created ideas, write copy, lay out artwork, contact media representatives, coordinate events for clients or represent employer directly before and general public.
>
> Coordinates events for customers and clients.

The petitioner also submitted a work experience equivalency document from Josef Silny & Associates, Inc. in which the Chair of the Department of Communications for the University of Miami evaluated the beneficiary's work experience in the field of public relations. The document stated that the beneficiary's 20 years of work experience was the equivalent of a U.S. bachelor of arts degree in public relations. The petitioner also submitted numerous newspaper articles, letters of appreciation, and photographs that documented the beneficiary's work in public relations, along with the beneficiary's resume.

On January 2002, the director requested further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested specific information with regard to the minimum academic requirements for

the proffered position along with justification for the requirements. The director also requested a list of employees that the beneficiary would manage along with their job positions. Finally the director requested a certified Labor Condition Application (LCA).

In response, the petitioner submitted a certified LCA, along with letters from public relations firms in the Miami area. The petitioner also submitted job postings from the Public Relations Society of America website. With regard to employees whom the beneficiary would manage or supervise, the petitioner stated that it hired [redacted] as president of the company in 2001, and had employed three additional individuals as independent contractors during 2001. The petitioner stated that when the beneficiary is authorized to work as a public relations manager and events coordinator, it would look to rapidly expand the number of employees under the beneficiary's supervision.

The petitioner stated that the minimum requirement for entry into the position of public relations manager is a degree in public relations or a related field. The petitioner provided a further explanation of the duties of a public relations manager:

> A Public Relations Manager must understand public relations principles and techniques. Also a Public Relations Manager must understand public relations management and administration, including organizational development, writing, emphasizing news releases, proposals, annual reports, scripts, speeches, and related items; visual communications, including desktop publishing and computer graphics; and research, emphasizing social science research and survey design and implementation. A Public Relations Manager must have a formal understanding of advertising, journalism, business administration, finance, political science psychology, sociology, and creative writing is also helpful.
>
> Furthermore, a Public Relations Manager and Events Coordinator must have knowledge and understand the Management of Organizations. This requires an understanding of the theory and practice of managing formal organizations, including planning organizational theory, human behavior and control. This is something learned in a formal baccalaureate curriculum. Also a Public Relations Manager and Events Coordinator in the Formal Events Industry must also have some understanding of Management Science. This means that this Manager should understand how the statistical methods and techniques used by the company will affect business decision-making as it concerns the organization of events.

> A Public Relations Manager and Events Coordinator in the Events Industry should have formal acquired skills of Managing Personnel in order to carry out the position effectively. These kinds of skills are acquired in a Bachelor's degree program. This is acquired through the study of historical development and development of planning for and organizing of departments. Furthermore these skills are acquired through the study of the proper selection and training of employees for the holding of events.
>
> Furthermore a Public Relations Manager and Events Coordinator in the Events Industry must be taught to properly manage emerging labor problems.

Finally the petitioner noted that a public relations manager had a SVP of 7 under the Department of Labor's *Dictionary of Occupational Titles* (*DOT*).

On May 7, 2002, the director denied the petition. The director stated that the 1998-1999 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) indicated that a college degree in essentially any major would suffice as an educational background for a public relations position. The director then stated that a baccalaureate degree **in a focused, job related field** is not needed." (Emphasis in original.) The director further stated that the petitioner had not established that the job offered to the beneficiary was significantly different from the public relations position described in the *Handbook*, or that the duties of the proffered position were sufficiently complex as to require a bachelor's degree in a specific specialty for entry into the position. Finally the director noted that a position cannot be said to be a specialty occupation if the only reason for requiring a baccalaureate degree is to acquire a higher caliber of employee, citing to *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966)

On appeal, counsel asserts that the Bureau misread the *Handbook* excerpt on public relations managers, and also asserts that the nature of the specific duties of the 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 specific areas. Counsel then reiterates the breakout of areas of expertise that was previously submitted with the petitioner's response to the director's request for further information. Counsel refers to the SVP rating previously mentioned and to the job postings and letters from individuals in the public relations area previously placed on the record.

Upon review of the record, the petitioner asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles* (*DOT*)(4th Ed., Rev. 1991). However, the *DOT* is not considered a persuasive source of

information regarding whether a particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook* (*Handbook*) provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

In addition, a basic distinction can be made between the reasoning underlying the director's decision and the petitioner's assertions. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. [1]

As stated previously, the statute establishes that the petitioner must show that the proffered position requires a baccalaureate degree or higher, or the equivalent, <u>in a specific specialty</u>. (Emphasis added.) To interpret the criteria in 8 C.F.R.§ 214.2(h)(4)(iii) (A) as solely requiring a bachelor's degree is an incorrect interpretation.

In examining the first criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services(Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

The basic duties of public relations managers as outlined in the 2002-2003 edition of the *Handbook* on page 27 are as follows:

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[1] The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *Defensor v. Meissner* 201 F.3d 388 (5th Cir. 2000).

> *Public Relations Managers* supervise public relations specialists. . . . These managers direct publicity programs to a targeted public. They often specialize in a specific area, such as crisis management, or in a specific industry, such as health care. They use every available communication medium in their effort to maintain the support of the specific group upon whom their organization's success depends, such as consumers, stockholders, or the general public. For example, public relations managers may clarify or justify the firm's point of view on health or environmental issues to community or special interest groups.

With regard to the educational background or experience required for positions included within the Advertising, Marketing, Promotions, Public Relations, and Sales Managers classification, the *Handbook* on page 26 states: "College graduates with related experience, a high level of creativity, and strong communication skills should have the best job opportunities." On page 28, the *Handbook* continues:

> A wide range of educational backgrounds are suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background.
>
> . . . .
>
> For public relations management positions, some employers prefer a bachelor's or master's degree in public relations or journalism. The applicant's curriculum should include courses in advertising, business administration, public affairs, public speaking, political science, and creative and technical writing.

To the extent that the *Handbook* indicates that some employers prefer a bachelor degree in public relations or journalism, and that many other degrees are suitable for entry into public relations jobs, it does not appear that a bachelor's degree in a specific specialty is the minimum requirement for entry into the proffered position. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

With regard to the second criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely that the degree requirement is common to the public relations industry in parallel positions, the petitioner submitted letters from directors of three companies in the Miami area that stated a university degree was required for the position of public relations manager. This evidence is not

persuasive that a bachelor's degree in a specific specialty is common to parallel positions within the public relations field. None of the letters identify any specific specialty that a prospective public relations manager should possess upon entry into the field. It is also not clear whether any of the three companies would be considered a firm similar to the petitioner, and whether they require and only recruit individuals with bachelor degrees in a specific specialty for their public relation positions.

The petitioner also submitted thirteen job advertisements of varying length and detailed information from the Public Relations Society of America (PRSA) website. Some of these advertisements do not appear to be for parallel positions in similar firms. For example, one advertisement is for an assistant professor of public relations at Utica College, while another is for the director of corporate communication of a developer of multifamily properties. A job advertisement for a Baltimore-based public relations agency is the only advertisement directly related to the petitioner's business. This advertisement requires a bachelor degree in journalism, public relations or a related field along with three to five years of experience, preferably with an agency. This one advertisement is not enough to establish industry-wide standards.

In addition, the other job advertisements, as a group, do not identify any specific specialty. For example, one advertisement lists " bachelors degree in related field", while another lists "bachelor's degree in the arts, English, communications or related field". Accordingly, the job advertisements submitted by the petitioner do not establish that parallel positions in similar public relation firms require a bachelor's degree in a specific specialty.

In addition, the petitioner submitted no documentation that any professional public relations association, such as the PRSA, has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations

The petitioner can also establish this criterion by showing that its particular position is so complex or unique that it can only be performed by an individual with a degree. Counsel asserted in response to the director's request for further evidence that public relations managers required knowledge in many generic areas such as organizational management, personnel management and labor relations. Counsel reiterates his assertions upon appeal.

The assertions of counsel, however, do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Counsel provides no factual evidence to establish the above-mentioned knowledge areas make the petitioner's job either complex or unique.

The third criterion of 8 C.F.R. § 214.2 (h)(4)(iii), namely that the employer normally requires a degree or its equivalent for its public relations manager position is also not established. The petitioner did not identify any previous public relations manager hires. With regard to other employees working in public relations with the petitioner, the petitioner identified three subcontractors who have performed public relations work for the petitioner, along with a company president and a secretary. No information was placed on the record with regard to the subcontractors' educational credentials. To date, the petitioner has submitted no evidence to establish this criterion.

With regard to the final criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely 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 description provided by the petitioner of the beneficiary's work duties does not document that the duties of the proffered position are any more specialized or complex than the duties of any other public relations manager. While the job elements appear to require attention to detail, the record contains no further information on the nature of the public relations work performed by the petitioner that would establish that the duties of the job are either specialized or complex. Without more persuasive testimony, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.