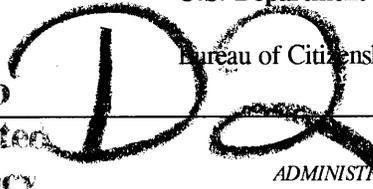


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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent disclosure of unwaranted
invasion of personal privacy**



ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, NW
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



AUG 05 2002

FILE: WAC 01 191 50441 Office: CALIFORNIA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:



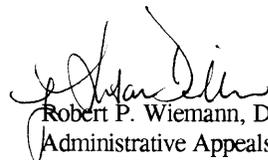
INSTRUCTIONS:

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner exports aircraft parts. It employs 10 people and has a gross annual income of \$5,000,000. It seeks to temporarily employ the beneficiary as a public relations specialist 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 Bureau erred in making its decision and that the position is a specialty occupation. In addition, counsel states that the Bureau failed to consider that the beneficiary had previously been approved for a position as a public relations specialist, "a position the Service has already concluded is a specialty occupation."

Section 214(i)(1) of the Immigration and Nationality Act (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 further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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.

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 position description submitted by the petitioner states that the beneficiary would:

[M]aintain a favorable image for [the] company and assist in developing outside partnerships and key accounts by responding to inquiries about the company, drafting surveys and questionnaires to be distributed to existing clients and analyzing the responses for use in public relations/marketing campaigns and business proposals: She will apply her knowledge of marketing and communications, as well as her knowledge of the airline industry, to draft survey forms designed to keep both existing and prospective clients informed of the company's programs and services, determine the level of satisfaction with the company's programs and services and determine the types of services provided by other replacement part suppliers and their desirability. She will analyze survey responses and prepare periodic reports summarizing the image of the company, current client needs and the adequacy of services provided. She will also use her research results to assist in creating public relations/marketing campaigns, developing partnerships with other companies and attracting key accounts.

In responding to the director's request for additional evidence, the petitioner re-stated the original position description and

then "expressly adopt[ed]" the O*Net description as an accurate description of the position being offered. In addition, the petitioner paraphrased the description for a public relations representative in the *Dictionary of Occupational Titles* and "expressly adopt[ed]" that as well.

The petitioner asserts that a description in the Department of Labor's (DOL) 2000-01 *Occupational Outlook Handbook (Handbook)*, which states that "one of (management services') largest professional specialty occupations is *public relations specialists . . .*" supports its claim that the position is, in fact, a specialty occupation. There is no indication that the DOL is using the term "specialty occupation" in a manner intended to track the language of the Act or the regulations. Indeed, the DOL does not have the authority to interpret the Bureau's regulations and state definitively that a position does or does not qualify as a specialty occupation for the purposes of visa eligibility. This language cannot be used to prove that the position is a specialty occupation. It is therefore necessary to address the four criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A) to determine whether the position can be considered a specialty occupation.

The petitioner need only show that the position meets one of the criteria in order to establish it as a specialty occupation. Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Section 214(i)(1)(B) of the Act provides further information about what is necessary in order to meet this criterion, in that it defines the term "specialty occupation" as an occupation that requires "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." (Emphasis added).

The 2002-03 Edition of the *Handbook* states on page 142:

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 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.

There is no clear standard for how one prepares for a career in public relations and no requirement for a degree in a specific specialty. The requirements appear to vary by employer as to what course of study might be appropriate or preferred. As a result, this position cannot be considered to have met this criterion.

II. 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.

A. Degree Requirement is Common to the Industry

Factors often considered by the Bureau when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp. 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for a public relations specialist position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted quotations from the *California Occupational Guides* and the *Handbook*. The information from the *Handbook* supports the Bureau's position rather than the petitioner's in that it states: "Over 70 percent of those in public relations services have a bachelor's degree or higher" This indicates that a degree is not required for entry into the industry.

The petitioner submitted an article from a journalism professor describing public relations professionals as changing a consumer's perceptions by understanding their psyche, and that this can be done by studying a variety of topics including psychology, communications, journalism, advertising and market research. The petitioner also submitted an article entitled "Public Relations in Business Aviation." This article describes the need for public relations regarding the use of business aircraft (aircraft owned by a particular business and used solely by that business). This has nothing to do with petitioner's business of exporting aircraft

parts, nor does it address the educational requirements of someone working in public relations in the aircraft parts export industry.

The petitioner asserts that these references show that the position is a specialty occupation "because a bachelor's degree is normally required and because a bachelor's degree is a standard prerequisite for our particular industry." There is no information submitted regarding the practices in the petitioner's particular industry. In addition, the petitioner submitted no documentation that any professional public relations association 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.

In the Notice of Appeal, counsel states: "Since petitioner has already shown that the position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), petitioner is no longer required to meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)." Therefore, the petitioner has chosen not to establish that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform it. In the instant petition, the petitioner has submitted no documentation that the position of a public relations specialist would involve duties seen as either unique or so complex that only an individual with a degree in a specific specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position

It appears that the petitioner has not hired a public relations specialist previously and therefore is not in a position to meet this criterion. The petitioner did submit information that the petitioner's Customer Service Manager, Operations Manager and Purchasing Manager all have bachelor's degrees; however, the qualifications needed for these unrelated positions are not relevant to the proffered position.

IV. 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 states, that according to the *Handbook*, a public relations specialist is a "business specialty" and that the regulations include "business specialties" in the specific listing of those occupations presumed to be specialty occupations. Again, there is no indication that the DOL is using the term "business specialty" in a manner intended to track the language of the Act or the regulations. The Bureau looks to the *Handbook* for guidance regarding position descriptions and educational requirements in given industries, but it is not a binding authority.

To date, the petitioner has placed no other information on the record with regard to the specialized and complex nature of the public relations specialist position. The job description in the original petition and in the response to the request for evidence contain only very general duties, with no detail as to how the beneficiary would specifically perform those duties for this petitioner. Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met this criterion.

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.

In turning to counsel's comments regarding the approval of an H-1B petition on the beneficiary's behalf in a different public relations position, the Bureau is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). In addition, the Administrative Appeals Office is not bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.