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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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



File: EAC 01 213 53496 Office: VERMONT SERVICE CENTER Date: JUN 03 2009

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:



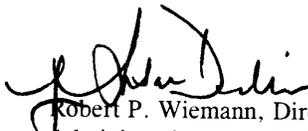
INSTRUCTIONS:

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

The petitioner is a New York wine exporter/importer with six employees and an initial capitalization of \$200,000. It seeks to temporarily employ the beneficiary as a public relations director 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 submits five additional documents to establish that public relations director is a specialty occupation.

Section 214(i)(1) of the Immigration and Naturalization 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:

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 proffered position is a specialty occupation. In the original petition received by the Vermont Service Center on May 30, 2001, the petitioner described the duties of the proffered position as follows:

[The beneficiary] will be entirely responsible for coordinating and organizing all of our publicity and public relations, including overseeing media advertising in Japan, direct mail, general public relations, and organizing a marketing strategy for [the petitioner]. Specifically [the beneficiary] will have to research the markets especially in Japan, organize a market and public relations campaign, put our name before prospective customers, both through web-based advertising and other means. [The beneficiary] will have to gather and analyze economic information as well as sales of different types of wines by different types of methods in different places in order to advise [the petitioner] on our marketing strategy.

On July 18, 2001, the director requested further documentary evidence from the petitioner. The director stated that the nature of the proposed duties did not appear to involve the necessary specialization or complexity so as to require a baccalaureate degree. He requested a detailed statement setting out the beneficiary's proposed duties and responsibilities and the percentage of time the beneficiary would spend performing the specific duties each day. In addition, the director asked for documentary evidence to show that a bachelor's degree in a specific field of study was a standard minimum requirement for the job. The director also requested documentation on previous employees in the proffered position, in particular, their academic credentials. Finally the director requested a certified Labor Condition Application (LCA).

In response, the petitioner submitted the following weekly breakdown of the beneficiary's work duties and time spent in the particular duties:

Ten hours: Composing e-mails and work on updating website. This is extremely important to our business since we are an internet-based new firm and we must be in constant contact with our customers, with prospective

customers, and we must organize and improve our web site.

Five hours: Organize cooperative advertising with wholesalers in Japan. Our thrust is to export local wines to Japan. This will be done principally through E-mail, our web site, a direct mail campaign in Japan. We will have to organize cooperative advertising with the wine wholesalers in Japan who will be carrying our wines.

Five hours: Work on direct mail campaign to Japan.

Five hours: Prepare displays, convention booths, display advertising, and other promotional items. As a new company, we want to have our name become more known and these are methods of doing that.

Ten hours: Market research into general market conditions for wines in Japan, and goods which are carried by our competitors, their prices, their marketing methods, etc. Market research is necessary in order for us to succeed against our competition and this will require approximately ten hours per week.

The petitioner stated it was a new company and it had no other employees performing the beneficiary's prospective duties. The petitioner also submitted the section on public relations specialists from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* to establish the industry-wide standard for entry into a public relations position. Finally the petitioner submitted a certified LCA.

On October 23, 2001, the director asked for further information with regard to the staff of the petitioner's business, in particular, their job titles and specific duties.

In response, the petitioner identified its staff as consisting of six individuals. Among these six staff members was the president of the petitioner, a sales manager, one accounting employee who is identified as an employee of an affiliate, along with three sales representatives. The petitioner stated that the duties of the beneficiary did not overlap with the duties of the other employees. The petitioner further stated the following with regard to the beneficiary's duties: "He will fill the important role of coordinating our marketing efforts through our web site, which necessitates the ability to communicate well in English and Japanese, and to research and analyze information about web marketing."

On April 5, 2002, the director denied the petition. The director noted that the *Handbook* excerpt did not document that a bachelor's degree was required to fulfill the job duties of the proffered position. (Emphasis added.) The director did not find the evidence

placed on the record sufficient to establish any of the four criteria outlined in 8 C.F.R. § 214.2 (h) (4) (iii) (A).

On appeal, counsel submits the following documentation:

- Excerpt from North Dakota Occupational Digest.
- A page from a web site entitled "All About Public Relations."
- Labor market information from the California Employment Development Department.
- Job listing from a HotJobs.com web site for a public relations manager.
- Position evaluation by [REDACTED] a consultant for Multinational Education and Information Services, Inc., Atlanta, Georgia. The evaluator is a professor of Mathematics and Computer Science at Morehouse College in Georgia and adjunct professor at Trinity College and University in South Dakota.

Counsel states that based on this evidence, the normal requirement for entry into the public relations specialist job is a bachelor's degree in one of a limited number of fields. As such, counsel asserts that the proffered position qualifies as a specialty occupation. He also asserts that the beneficiary has already obtained H-1B status as a public relations representative (Communications Coordinator).

Upon review of the record, the petitioner has not presented a persuasive argument for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h) (4) (iii) (A) will be considered separately below.

**I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)**

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 petitioner identified the proffered position as public relations specialist. It should be noted that the duties of the beneficiary with regard to marketing research add elements of a marketing specialist's duties to the position. However, for purposes of this proceeding, only the position of public relations specialist, the job title used by both the director and the petitioner, will be examined.

As outlined in the 2002-2003 edition of the *Handbook* on page 142, the duties of public relation specialists are as follows:

An organization's reputation, profitability, and even its continued existence can depend on the degree to which its targeted "publics" support its goals and policies. Public relations specialists serve as advocates for businesses, nonprofit associations, universities, hospitals, and other organizations, and build and maintain positive relationships with the public. . . .

Public relations specialists handle organizational functions such as media, community, consumer and governmental relations; political campaigns, interest-group representation; conflict mediation, or employee and investor relations.

With regard to the educational requirements for public relations specialists, the *Handbook* states the following:

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; in fact, internships are becoming vital to obtaining employment. The ability to write and speak well is essential. Many entry-level public relations specialists have a college degree 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—science, engineering, sales, or finance, for example.

Accordingly, The *Handbook* does not indicate that employers of public relations specialists require a bachelor's degree in a specific specialty for entry into the proffered position. (Emphasis added.) In addition, the critical element in examining this criterion 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.<sup>1</sup>

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<sup>1</sup> 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 (5<sup>th</sup> Cir. 2000).

As stated previously, the statute establishes that the petitioner must show that the proffered position requires a baccalaureate degree or higher, or the equivalent, in a specific specialty. (Emphasis added.) To interpret the criteria in 8 C.F.R. 214.2(h) (4) (iii) (A) as solely requiring a bachelor's degree in any field is an incorrect interpretation. Without more persuasive evidence, the petitioner has not established 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 - 8 C.F.R. § 214.1(h) (4) (iii) (A) (2)**

**A. Degree Requirement is Common to the Industry**

Factors often considered by the Bureau when determining the industry standard include: whether the Department of Labor's (DOL) *Occupation Outlook Handbook* (*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.2d 1151, 1165 (D.Min. 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 manager position were discussed in the previous section, and shall not be repeated here. On appeal, to establish the industry standard, the petitioner submitted additional documentation on educational requirements for public relations specialist positions. Sources of information ranged from an excerpt from the California Employment Development Department's website on Public Relations Representatives to a listing of a job vacancy for a public relations manager in Gaithersburg, Maryland found on the HotJobs.com Internet website.

While the petitioner submitted documentation from various parts of the United States to establish an industry wide standard, this evidence is not found sufficient for two reasons. First, the one job advertisement submitted did not appear to be for a company similar in size or scope to the petitioner. Second, the remaining documentation that referred to educational credentials was not specific to any particular job and spoke more precisely on how to prepare to get a job in public relations. Such documents are not probative of whether employers would routinely employ and recruit only degreed individuals.

In addition, the petitioner submitted no documentation that any professional association has made a bachelor's degree a requirement for entry into the public relations 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." While Professor Sambandham provided a cursory analysis of the proffered position and of the beneficiary's qualifications, his evaluation and comments are not viewed as coming from an individual in the public relations field. Accordingly the petitioner has not established 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 it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted a breakdown of the duties to be performed by the beneficiary. There is no documentation on the record that that the position of a public relations specialist within a wine import/export company would involve duties seen as either so unique or 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 - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)**

The petitioner established that it has not hired anyone previously for 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 - 8 C.F.R. § 214.2(h) (4) (iii) (A) (4)**

The petitioner placed additional information on the record with regard to the time to be spent by the beneficiary in performing the duties of the proffered position as well as the specific duties to be performed. Nevertheless this expanded explanation of the proffered position and the original job description contain work duties that are similar to other public relations and marketing positions. The record is not clear that the petitioner's job involves any duties that are more specialized or complex than any other public relations specialist position. In addition, while the petitioner mentioned duties involving market research and cooperative advertising activities that were specific to Japan, and also exporting wine to Japan, the record is not clear that such duties are more specialized or complex when done in or with regard to Japan than when performed with regard to any other foreign country. Without more persuasive evidence as to the specialized or complex nature of the proffered position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

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.