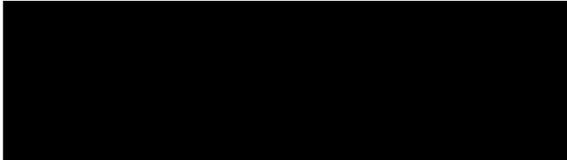


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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



JUN 24 2003
Date:

File: WAC-02-025-52411

Office: CALIFORNIA SERVICE CENTER

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)

ON BEHALF OF PETITIONER:



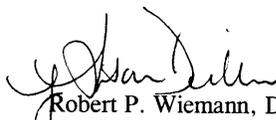
INSTRUCTIONS:

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a human resources staffing agency with five employees and a gross annual income of \$250,000. It seeks to employ the beneficiary as a public relations specialist for a period of three years. The director denied the petition because the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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 nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that the duties of the proffered position are so complex that a baccalaureate degree is required. On appeal, counsel states, in part, that the Department of Labor (DOL) in its *Dictionary of Occupational Titles (DOT)* has determined that the proffered position requires the minimum of a baccalaureate degree. Counsel further states that the proffered position also contains duties similar to those of a market analyst, a position that has been determined by the Bureau to be a specialty occupation.

Counsel's statement on appeal is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary's] duties include planning and development of public relations program designed to create and maintain favorable public image of [the petitioner]. She should be able to build and maintain a carefully planned relationship with the general public.

She will research and analyze information essential in identifying general public's needs, wants and demands. This would then be used in planning and development of programs and activities that would maximize opportunities geared toward consumer satisfaction.

[The beneficiary] would be involved in promoting the company's goal through publicity efforts as speeches, exhibits, anniversary programs and forums.

In addition, she should be able to generate public awareness towards our company's latest ventures, policies and accomplishments. It is also her role to keep us informed on social, economic and political trends that might affect [REDACTED] [sic] INC. and its ventures. She is expected to make recommendations to top management about how the company should react to certain trends.

She has to evaluate advertising and promotion programs and ensure its compatibility with public relations efforts. Writing press releases, brochures, speeches, scripts, magazine articles, proposals and other management communications would likewise be part of [the beneficiary's] job.

Lastly, [the beneficiary] will organize public relations materials and presentations. She will also devote time in implementing a system that will be available to other Public Relations Specialists at the conclusion of her period of 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 not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in public relations or an equivalent thereof. Although counsel asserts that the proffered position contains some market analyst duties, at page 239 of the *Handbook*, the DOL states: "[M]arket research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. . . ." While the duties described by the petitioner appear to involve some sales analysis, they appear to be primarily those of a public relations specialist. At page 142 of the *Handbook*, the DOL describes the position of a public relations specialist, in part, as follows:

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 Understanding the attitudes and concerns of consumers, employees, and various other groups also is a vital part of the job. To improve communications, public relations specialists establish and maintain cooperative relationships with representatives of community, consumer, employee, and public interest groups and with representatives from print and broadcast journalism.

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL's *DOT* (4th Ed., Rev. 1991). However, the AAO does not consider the *DOT* 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 DOL 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 DOL'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 DOL has assigned it a specific SVP rating in the *DOT*.

A review of the DOL's *Handbook*, 2002-2003 edition, at pages 142-143, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in public relations specialist jobs. 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 such employment. Many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communications. Other firms seek college graduates who have worked in electronic or print journalism. Still other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not provided documentary evidence that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as public relations, for the offered position. Third, although the record contains various job advertisements, none of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. The advertisements do not indicate that the prospective employers' organizations are similar to the

petitioner's organization. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the 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. 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.

ORDER: The appeal is dismissed.