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

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536



NOV 19 2003

File: LIN 02 196 54219

Office: NEBRASKA SERVICE CENTER

Date:

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:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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 which 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 Citizenship and Immigration Services (CIS) 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation involved in wholesale and retail sales of sport videos/television programs. It has five employees, a gross annual income of \$3,000,000, and wishes to employ the beneficiary as a public relations manager. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief and additional information. Counsel asserts that the proffered position is a specialty occupation and requires a minimum of a bachelor's degree for entry into the position. In support of that assertion, counsel submits 11 job advertisements for public relations positions indicating that a bachelor's degree is required for those positions.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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:

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.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

[The beneficiary] is being offered temporary employment in the position of Public Relations Manager. Her responsibilities include:

- Plans and conducts public relations program designed to create and maintain favorable public image for the company;
- Plans and directs development and communication of information designed to keep our customers informed of our video/sport programs and events;
- Researches public images of popular sports;
- Confers with marketing personnel to develop new video programs based on the public image research;

- Prepares and distributes company information such as brochures, fact sheets, news releases, photographs, video commercials;
- Purchases advertising space and time, directs public relations activities by utilizing such space and time;
- Arranges for and conducts public-contact programs designed to meet our objectives, utilizing knowledge of changing consumer's preferences and popularity in sports;
- Acts as a liaison and directs public relations activities of our Tokyo office and program distributors; [and]
- Confers with marketing personnel to coordinate production of advertisements and promotions through media.

The position offered to [the beneficiary] requires strong cross-cultural communications skills to handle diverse and sophisticated needs of our Japanese customers. In addition, we also require those skills to promote goodwill and to represent our company to the public. The individual must also be a bilingual who can communicate effectively with the US headquarters and the office in Japan and conduct public relations projects in both English and Japanese.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner submit evidence establishing that the proffered position qualified as a specialty occupation and met the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(C).

In response to the director's request, counsel restated the above listed job duties and assigned a percentage breakdown of the amount of time allocated for each duty. Counsel indicated that the proffered position was not a general managerial position as the petitioner did not have a public relations department per se. The proffered position requires duties performed by both public relations managers and public relations specialists, and the beneficiary will be afforded unfettered authority in decision-making regarding public relations matters. Counsel asserted that the duties of the offered position are so complex that they could only be performed by an individual with a minimum of a bachelor's degree.

Counsel also submitted two opinion statements: (1) a statement from the Director of Marketing with the BSQUARE Corp. indicating that it would "require a bachelor[']s degree in a related specialized field of study to [sic] our public relations position with the proposed job duties"; and (2) a statement from ██████████ President of Pacific Software Publishing, Inc., indicating that its public relations position was similar to the proffered position. Mr. ██████████ stated that his company always required a bachelor's degree in either public relations, communications, journalism, advertising or a similar field of study for its public relations positions. Counsel indicated that that all of the petitioner's past public relations personnel held a minimum of a bachelor's degree. In support of that assertion, counsel submitted the resumes of past employees ██████████ and ██████████. Mr. ██████████ had a bachelor's degree in Communications, and Mr. ██████████ held bachelor's degrees in English Literature and Language, and Computer Graphics/Advertising Design.

Finally, counsel stated in the response that the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), was inconsistent in its adjudication of H-1B petitions for public relations managers. Counsel provided a California Service Center approval notice for case # WAC 01 265 56533, a copy of the I-129 petition, LSA, and supporting documentation with a position description. The job description presented in the California case was virtually identical to the job description in this instance.

In denying the I-129 petition, the director noted that the U.S. Department of Labor's *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*), found no requirement of a baccalaureate or higher degree in "a specialized area" for employment as a public relations manager or public relations specialist. The director also concluded that the record was insufficient to establish that a degree requirement in a specific specialty was common in the industry as a whole.

On appeal, counsel asserts that the proffered position is more closely related to a public relations specialist position than a public relations manager, although the position incorporates duties performed by both. Counsel states that a minimum of a bachelor's degree in a related area is the minimum requirement for entry into the position, and that the duties of the proffered position are so specialized and complex that a baccalaureate level education is necessary to perform the duties.

The AAO will accept counsel's assertion that the proffered position contains duties normally performed by both public relations managers and public relations specialists. The

petitioner has, however, failed to qualify the position as a specialty occupation. The *Handbook* notes that there is no defined standard for entry into the field of public relations. Any number of educational pursuits will suffice. Many entry level positions require degrees in public relations, journalism, advertising or communications. Other positions require applicants with demonstrated communications skills and training or experience in a field related to the firm's particular business, such as science, engineering, sales or finance. *Id.* at 142-143. The *Handbook* further notes that many employers prefer related experience plus a broad liberal arts background for public relations managers. Degrees in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. *Id.* at 28. The proffered position does not, however, require the theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's degree, or its equivalent, in a specific specialty, for entry into the position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The job advertisements submitted by the petitioner are insufficient in scope to establish that a degree requirement is common to the industry as a whole in parallel positions among similar organizations. Likewise, the opinion letters submitted by BSAUARE Corp. and Pacific Software Publishing, Inc. do not establish that a degree requirement is the industry norm, nor do they purport to do so. They simply state that a bachelor's degree is required in their organizations. The duties of the proffered position are not so complex or unique that they can only be performed by someone with a degree in a specific specialty. The petitioner has failed to satisfy the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner did state that it normally required a degree for personnel holding the offered position. The evidence presented in support of this assertion, however, consisted of the resumes of only two previous job holders. One held a degree in Communications, while the other held degrees in Computer Graphics/Advertising Design and English Literature and Language. The submission of this evidence further supports the proposition that a degree in a specific specialty is not required for the offered position as all three degrees are in different educational disciplines. The petitioner has failed to satisfy the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner did not establish that the nature of the specific duties was so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Having failed to establish any of the four criteria contained in 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner has

not qualified the proffered position as a specialty occupation.

The final issue to be considered is CIS's previous approval of a public relations manager position in case number WAC 01 265 56533. Counsel did not raise this issue in the appellate brief, but the issue was raised in response to the director's request for evidence. Counsel asserts that prior I-129 petitions have been approved with similar, if not identical job descriptions. Indeed, the job description in the above cited California petition was virtually identical to the job description in this instance. Each nonimmigrant petition is a separate proceeding with a separate record. 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approval was granted in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated. See, e.g., *Matter of Church of Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. V. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.