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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

FILE: WAC 01 066 50420 Office: CALIFORNIA SERVICE CENTER

Date: NOV 26 2003

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:

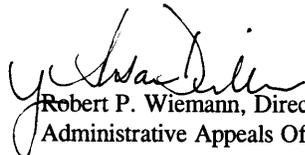
INSTRUCTIONS:

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

The petitioner designs, manufactures and sells jewelry. It employs eight people and has a gross annual income of \$1,000,000. It seeks to temporarily employ the beneficiary as a public relations administrator for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On the Notice of Appeal, counsel asserts that the director erred in making his decision and that the position is a specialty occupation. In addition, counsel states that Citizenship and Immigration Services (CIS) used an incorrect standard in making the determination that the proffered position is not a specialty occupation.<sup>1</sup>

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,

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<sup>1</sup> The AAO notes that Bernard P. Wolfsdorf submitted a Form G-28 in November 2001 indicating that he was the petitioner's new attorney of record. However, the beneficiary, not an authorized representative of the petitioner, signed the Form G-28. Only a petitioner or its attorney may file an appeal. See 8 C.F.R. § 103.2(a)(3). A beneficiary of a visa petition or a beneficiary's representative is not entitled to file an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). As the Form G-28 does not conform to regulatory requirements, CIS will not recognize Mr. Wolfsdorf as the petitioner's attorney of record.

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 counsel in the response to the director's request for evidence states that the beneficiary would: "Define the market for the company product; establish brand recognition; create advertising campaign; write editorials for magazine publications; create the promotional materials; research stores nationally and internationally that may be suitable to carry and promote the products." The petitioner's statement regarding the position states that the beneficiary's would:

Define the market for [the petitioner]; create promotion materials that establishes [sic] [the petitioner] as market leader; research stores across the country and internationally and decide suitability for [the petitioner's] designs; build private national and international customer base - indirect marketing; establish brand recognition; create cohesive image on website; create advertising campaign; get editorials in national magazines; create relationships with major catalogues for global distribution.

Counsel asserts that the director incorrectly used a position description from the Department of Labor's (DOL) 1998-99 *Dictionary of Occupational Titles (DOT)*, rather than the 2000-2001 DOT. The director, however, only referred to DOL's *Occupational Outlook Handbook (Handbook)* in his decision and not to the DOT. The director noted that the *Handbook* "states that there is no requirement of a degree in a specific and specialized area. . . . The [*Handbook*] makes no findings that a baccalaureate degree or higher is a common industry requirement for Public Relations." On appeal, counsel refers to the DOT, stating that the 2000/01 DOT indicates that the position has become increasingly technical, with the result "that this occupation now customarily requires a Bachelor's degree in order to perform the job duties." 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 *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, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOT indicates that a bachelor's degree is required.

In order to determine whether the beneficiary qualifies for the benefit sought, it is 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).

Regarding public relations specialists, 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.

The career of public relations manager has equally flexible requirements. The 2002-03 *Handbook* states on page 28:

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. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job. . . . For public relations management positions, some employers prefer a bachelor's or master's degree in public relations or journalism.

There is no clear standard for how one prepares for a career as a public relations specialist or public relations manager 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, the proffered 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 CIS 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 public relations specialist and public relations manager positions were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, counsel submitted ten job listings from the Internet for public relations specialists and public relations managers, all of which require a bachelor's degree. Counsel states that the positions are for "similar jobs" to the proffered position, but it appears that most of the positions are in the software or technology industry, which cannot be considered similar to the petitioner's industry of jewelry design and sales. 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 petitioner's industry which attest that such firms routinely employ and recruit only degreed individuals.

#### 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, counsel has submitted no documentation that the position of a public relations specialist or manager would involve duties seen as either unique or so complex that only an individual with a degree in a specific specialty could perform them. Counsel states, "[T]he basic requirements include the ability to comprehend and administer complex duties that require theoretical and analytical abilities related to the field." Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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

Counsel states that this is a new position and that the petitioner has not hired a public relations specialist or manager previously and, therefore, is not in a position to meet this criterion.

**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**

In response to the request for evidence, counsel states, "The position description provides a detailed overview of the complexity of this job." In a letter accompanying the initial petition, counsel states:

The promoter of the product assists the management in deciding critical business decisions about product positioning and niche placement. Product positioning involves an acute analysis of each market segment as defined by the promoters' [sic] research activities. The promoter must constantly monitor the product plan's performance and make adjustments to this plan as the market shifts.

To date, neither counsel nor the petitioner has placed any other information on the record with regard to the specialized and complex nature of the public relations specialist or manager position. The job description in the original petition and in the response to the request for evidence contain only general duties, with no detail as to how the beneficiary would specifically perform those duties for this petitioner. Counsel's statements are not supported by any documentary evidence. 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. 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.