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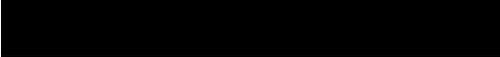
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U.S. Department of Homeland Security
Citizenship and Immigration Services

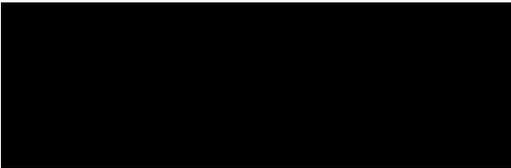
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: WAC 01 239 54224 OFFICE: CALIFORNIA SERVICE CENTER DATE: **JAN 06 2004**

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)

IN BEHALF OF PETITIONER:


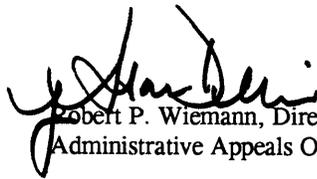
INSTRUCTIONS:

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 Acting Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an import trading company that employs six persons and has a gross annual income of \$800,000. It seeks to employ the beneficiary as a public relations specialist. The acting director denied the petition because the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the proffered position of public relations specialist is a specialty occupation, because a bachelor's degree is a standard industry requirement, and the proposed duties are highly complex.

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

The 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 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.

In the original Form I-129 filing, the petitioner described the proposed duties thusly:

Promote company sales and operations using public relations and marketing skills within large Filipino American community via liaison activities with both mainstream and community oriented newspapers, radio, television stations and trade fairs. Interview and research the community by way of sampling customers and potential customers on their reactions to products offered by the company. Conduct a series of reports covering such areas as demographic profiles and trends, consumer budgeting income, and purchasing power, and analysis of competitive products. Arrange interview [sic] with officials and prepares [sic] brochures, articles and other literature promoting the company. Prepare press releases, arrange and conduct programs for company representatives and the public.

The petitioner stated that the position requires an individual with a bachelor's degree in communications, journalism, or advertising, and possibly a number of years of experience in sales, marketing, or public relations.

The acting director requested further evidence to establish that the proffered position was a specialty occupation, and also to establish the beneficiary's qualifications to perform a specialty occupation. In response, the counsel provided a breakdown of the percentage of time the beneficiary would spend on each duty. The response also included several Internet job postings, as well as information about the beneficiary's qualifications.

On March 11, 2002, the acting director denied the petition, finding that the petitioner had not established that the proffered position was a specialty occupation. The acting director noted that many of the proposed duties appear to belong to positions in the field of marketing and research and development rather than public relations. The acting director also pointed out that the job announcements submitted do not appear to correspond to organizations similar to that of the petitioner.

On appeal, counsel asserts that the nature of the job duties is so specialized and complex that the knowledge required is usually associated with the attainment of a baccalaureate or higher degree.

The basic question presented is whether the proffered position requires a baccalaureate degree or higher in a specific specialty. According to the Department of Labor's *Occupational Outlook Handbook (Handbook)* 2002-2003 edition at pages 142-143, "[t]here are no defined standards for entry into a public relations career." While many public relations specialists hold degrees in public relations, journalism, advertising, or communications, others are able to enter the field with experience in science or engineering, for example. The *Handbook* contains similar information about positions under the category of advertising, marketing, promotions, public relations, and sales managers, at page 28. According to the *Handbook*, this field admits entrants with a wide range of educational backgrounds, including business administration, science, and liberal arts. There is no other evidence to establish the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The record includes several Internet job postings for public relations positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, nor that the advertised positions are parallel to the instant position. The record does not include any documentation to support the complexity or uniqueness of the proffered position, either. The petitioner has, thus, not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

There is no information on the record regarding the educational and training qualifications of any previous incumbents of the proffered position. Although counsel states, on appeal, that the proffered position is highly specialized and complex, no documentation to support this claim has been provided. Therefore, the petitioner has not established the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) or (4).

Inasmuch as the proffered position does not require a bachelor's degree or its equivalent in a specific specialty, it fails to meet the definition set forth at 8 C.F.R. § 214.2(h)(4)(ii) and cannot be considered a specialty occupation.

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. The petition is denied.