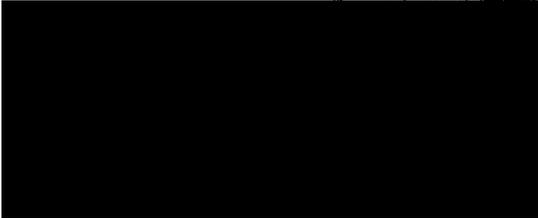


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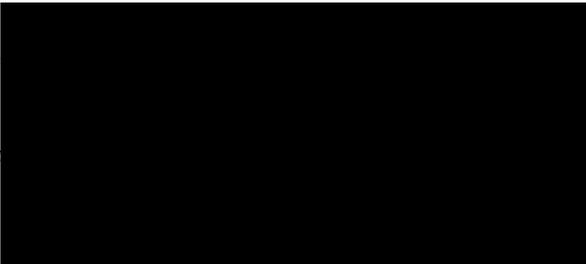
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FILE: WAC 02 034 58411 Office: CALIFORNIA SERVICE CENTER Date: **JUL 12 2004**

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Plussa

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 accounting and auditing firm that seeks to employ the beneficiary as a public relations specialist. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, the petitioner states that the proffered position 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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a public relations specialist. Evidence of the beneficiary's duties includes the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail writing public relations materials, special articles, management biographies, and internal and external correspondence; building and maintaining positive relationships with clients and the public; handling media relations, advertising, and sales promotions to support marketing; preparing annual reports; maintaining a database of articles and public relations materials; providing information to management about customer relations; assisting management in public relations strategies; developing with management all service promotion and advertising or public stunts; and generating public relations information relating to a specific area such as target marketing and the company's image and values. In the initial petition, the petitioner stated that a candidate must possess a bachelor's degree in mass communication, preferably with experience in the field. Then, in response to the request for evidence, the petitioner stated that a candidate must possess a bachelor's degree in public relations, journalism, mass communications, or a related discipline.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director found the job description vague and further found that the position's duties combined those of a public relations and marketing manager. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that a bachelor's degree is not required for entry into public relations specialist and marketing manager positions.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel maintains that a college degree in journalism, public relations, communications, or a related field is required for the proffered position. Counsel contends that it is the employer's responsibility to determine the qualifications necessary for an individual to effectively perform the position's duties and responsibilities.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria 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." See *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 director properly found that the evidence contained in the record failed to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A careful review of the *Handbook* discloses that the director correctly determined that the duties of the proffered position are an amalgam of those performed by a public relations specialists and a marketing manager, and that these positions do not require a bachelor's degree in a specific specialty. 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. Many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communication. However, some firms seek college graduates who have worked in electronic or print journalism. Yet, other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business—information technology, health, science, engineering, sales, or finance, for example. Accordingly, there is no specific degree requirement for entry into a public relations position.

Similarly, the *Handbook* points out that a marketing manager position does not require a bachelor's degree in a specific specialty. A wide range of educational backgrounds is 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. Employers accept a bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects. Specifically for marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous. In highly technical industries, such as computer and electronics manufacturing, employers prefer a bachelor's degree in engineering or science, combined with a master's degree in business administration. As such, no specific degree requirement exists for entry into a marketing manager position.

No evidence in the record establishes the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Likewise, there is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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. Again, the *Handbook* portrays the duties

of the proffered position as being performed by public relation specialists and marketing managers – positions that do not require a bachelor's degree in a specific specialty.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.