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U.S. Citizenship
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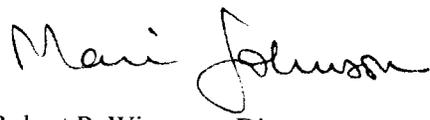
FILE: WAC 02 283 50844 Office: CALIFORNIA SERVICE CENTER Date: JUN 09 2004

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:
[Redacted]

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.

to 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 a travel agency. It seeks to employ the beneficiary as a corporate communications specialist, and endeavors to classify her 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, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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.

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 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 are 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 proceedings 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a corporate communications specialist. Evidence of the beneficiary’s duties was included with the I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would: plan and conduct public relations programs to create and maintain widespread company recognition (100 per cent of the time); conduct research and utilize specific knowledge concerning economics, trade, marketing, technology, attitudes and opinions of consumers and other groups interested in the company to develop promotional strategies (20 per cent of the time); create policies to meet economic and other changes met by customers (15 per cent of the time); consider the company’s goals and strategies to execute a public relations campaign, while developing marketing materials and organizing corporate promotional events (40 per cent of the time); prepare and distribute fact sheets and news releases to media representatives (15 per cent of the time); and coordinate all public relations efforts with the sales department (10 per cent of the time). The petitioner requires a minimum of a bachelor’s degree in communications, public relations, or a related field for entry into the offered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief and indicates that the offered position satisfies the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2) and (4).

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for advertising, marketing, promotions, public relations, and sales managers. The *Handbook* notes that a wide range of educational backgrounds are suitable for entry into those positions, but that many employers prefer related

experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, marketing, sales, and promotion management positions may require a bachelor's or master's degree in business administration with an emphasis in marketing. In highly technical industries, such as computer and electronics manufacturing, a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* further notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty, or its equivalent, is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines is acceptable. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this criterion the petitioner submitted an opinion letter from [REDACTED] Associate Professor of Marketing/Chair of the Department of Marketing, W. Paul Stillman School of Business, Seton Hall University. [REDACTED] states that the offered position is a specialty occupation requiring a baccalaureate level education in English, communications, public relations, or related liberal arts fields. [REDACTED] opinion is consistent with the findings of the *Handbook*, as well as numerous job advertisements submitted by the petitioner. The job advertisements, which the petitioner contends are for similar positions, note that degrees in the following fields are acceptable for the position: communications, marketing, related business fields, journalism, public relations, English, business communications, technical writing, publishing, community relations, construction management, architecture, and engineering. Many of the advertisements noted that a college degree was required, but specified no particular field of study. The *Handbook* finds acceptable a broad liberal arts degree with study in sociology, psychology, literature, journalism or philosophy. Degrees in business, engineering, and other technical fields are also acceptable, depending on the requirements of the employer. It is readily apparent that a degree in a specific specialty is not common to the industry for parallel positions among similar organizations. A degree in any number of educational pursuits will suffice.

The petitioner does not assert that it normally requires a degree or its equivalent for the offered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor has it established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. The duties of the offered position are routine in the industry for advertising, marketing, promotions, public relations, and sales managers. The petitioner has, therefore, failed to satisfy the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner also makes reference to another AAO approval (*Matter of X*, 2 Immig.Rptr.B2-158, Jul. 1985) in support of its contention that the proffered position qualifies as specialty occupation. The aforementioned case is a non-precedent decision. At issue in that case was whether the proffered position required the

services of a member of the professions under prior law, as opposed to whether the position would qualify as a specialty occupation under current regulations cited above. Furthermore, while the duties described in the aforementioned case contain some duties that are similar to the duties of the position now before the AAO, the duties in their entirety are not sufficiently similar to the proffered position to classify the two positions as the same or substantially similar positions.

It should further be noted that counsel's assertions regarding the *Dictionary of Occupational Titles* (DOT) SVP rating for the offered position are also unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.