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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

02

[Redacted]

FILE: WAC 03 060 53272 Office: CALIFORNIA SERVICE CENTER Date: 7/17/2003

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:

[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.

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 involved in the wholesale of silk flowers. It seeks to employ the beneficiary as a public relations 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 stating that the proffered position qualifies as 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 101(a)(15)(H)(i)(b) of 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 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 public relations 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: research the demographics and requirements of potential clients – 10 percent of the time; develop and prepare public relations programs/operations/events/literature that bring awareness of the petitioner and emphasize the credibility, reliability, accomplishments, probity and dependability of the petitioner's services – 20 percent of the time; act as liaison with the press regarding press releases and media communication, and arrange advertising space determining the scope and extent thereof – 15 percent of the time; develop the policy/strategy/philosophy to be adopted and implemented by the business in its public relations presentation – 15 percent of the time; arrange and prepare meetings with clients and prospective clients, speeches, visual aids, and literature – 15 percent of the time; attend to all communications/contact and meetings with appropriate government authorities, community leaders, and consumer organizations – 15 percent of the time; and determine the best methods to communicate the petitioner's business to any interested party – 10 percent of the time. The petitioner states that a bachelor's degree in public relations, communications, journalism, advertising or other communications related field is the minimum requirement for entry into the proffered 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).

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, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner does not assert that it normally requires a degree or its equivalent for the offered position as the position is a new position with the company. 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).

Counsel's assertions regarding the DOT's 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.