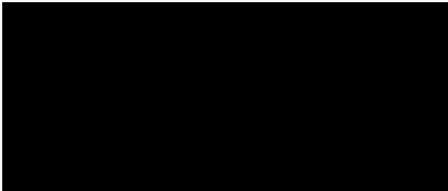


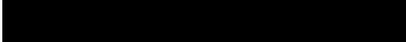


U.S. Citizenship  
and Immigration  
Services

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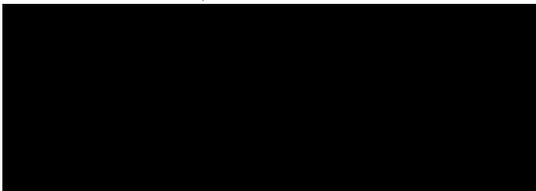


FILE: WAC 03 022 52110 Office: CALIFORNIA SERVICE CENTER Date: **OCT 25 2004**

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent disclosure of information  
pertaining to privacy

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**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 provides mortgage services in California, Hawaii, and the Philippine Islands. It seeks to employ the beneficiary as a director of public relations and advertising. 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, counsel submits a brief and additional evidence.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a director of public relations and advertising. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail planning and directing public relations activities; conducting and developing promotional advertising and medical campaigns; creating strategies and planning and supervising programs to increase awareness about the petitioning entity; developing a list of press, media, and community contacts; writing, producing, and distributing press kits, stories, and other items; developing and overseeing delivery of publications, and press and media releases; assisting in the production of the company newsletter; and assisting in the design of the website. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in mass communication, public relations, or a related field.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director concluded that the duties of the proffered position are performed by advertising, marketing, promotions, public relations, and sales managers, occupations that do not require a bachelor's degree in a specific specialty. The director stated that no evidence demonstrated that the beneficiary's duties are normal and customary in similar organizations in the petitioner's industry or that the degree requirement is common to the industry in parallel positions among similar organizations as the petitioner.

On appeal, the petitioner states that the occupation of a director of public relations and advertising is a specialty occupation requiring a bachelor's degree. The petitioner contends that the *Handbook* states that employment opportunities are best for college graduates who combine a bachelor's degree in public relations or a communications-related field, and that employers require a bachelor's degree because of the training and skills associated with such a degree. Citing the website Career Builder, the petitioner states that it shows that companies require a baccalaureate degree as the minimum entry requirement for a public relations job. The petitioner describes in detail the beneficiary's duties, and claims that a public relations director performs specialized and complex duties that require knowledge associated with the attainment of a baccalaureate degree.

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)).

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.

The director properly concluded that the duties of the proffered position are performed by advertising, marketing, promotions, public relations, and sales managers, occupations that do not require a bachelor's degree in a specific specialty. The *Handbook* reports:

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. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

According to the *Handbook*, "[f]or marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing"; "[f]or advertising management positions, some employers prefer a bachelor's degree in advertising or journalism"; and [f]or public relations management positions, some employers prefer a bachelor's or master's degree in public relations or journalism." Thus, according to the *Handbook*, employers do not require a baccalaureate degree in a specific specialty for advertising, marketing, promotions, public relations, and sales managerial jobs. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits job postings and the *Occupation Report* from the California Employment Development Department.

This evidence does not prevail in establishing the second criterion. The two organizations in the postings are dissimilar from the petitioner, a small real estate financing company. Triad Financial Corporation provides loans for automobiles and has over 1,400 employees, and Vitesse Semiconductor is in the semiconductor industry. The *Occupation Report* indicated that employers require a bachelor's degree for public relations jobs, but it does not mention a specific specialty for the occupation. Finally, the evidence about Loansnap.com does not discuss jobs in public relations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that employers do not require a baccalaureate degree in a specific specialty for advertising, marketing, promotions, public relations, and sales managerial jobs.

Nor is there 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 evidentiary record fails to satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which 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. Contrary to the petitioner's contention that employers require a bachelor's degree for public relations positions because of the training and skills associated with such a degree, the *Handbook* evinces that employers do not require a baccalaureate degree in a specific specialty for advertising, marketing, promotions, public relations, and sales managerial jobs.

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.