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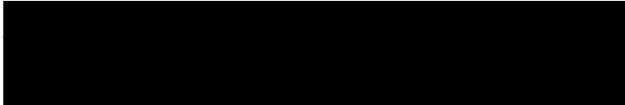
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FILE: WAC 04 005 52631 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2005**

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:

SELF-REPRESENTED

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The 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 a jewelry manufacturer and seeks to hire the beneficiary as a public relations specialist. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (4) the director's denial letter; and (5) Form I-290B, with petitioner's brief and new evidence. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An 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.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a public relations specialist. Evidence of the beneficiary’s duties includes: the Form I-129 and counsel’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail conducting market and public opinion research to introduce or test specific products or measure public opinion (20% of time); counseling company management in effective ways of communicating with public (20%); purchasing advertising space and time as required to promote company’s product or agenda (5%); conferring with production and support personnel to coordinate production of advertisement and promotions (20%); studying needs, objectives, and policies of company seeking to promote specific products (10%); preparing and distributing fact sheets and photographs of products (2%); planning and directing developing and communications of informational program designed to keep the public informed of company’s product and agenda (10%); and engaging in promoting or creating goodwill for individuals, groups, or organization by writing or selecting favorable publicity material and releasing it through various campaigns in all types of media for products (3%). The petitioner indicated that the position requires a bachelor’s degree.

In his denial, the director noted that the duties of the proffered position reflect the duties of a public relations specialist as listed in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*). With respect to the educational qualifications required of public relation specialists, the director noted that the *Handbook* indicated:

There are no defined standards for entry into a public relations career. A college degree combined with public relations science, usually gained through an internship, is considered excellent preparation for public relations work; in fact, internships are becoming vital to obtaining employment. The ability to write and speak well is essential. Many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communications. Some firms seek college graduates who have worked in electronic or print journalism. Other employers seeks applicants with demonstrated communications skills and training or experience in a field related to the firm’s business – science, engineering, sales, or finance, for example.

The director stated that this information indicated that although many entry-level applicants have a baccalaureate level of training, it is not a normal, industry-wide minimum requirement for entry into the occupation.

On appeal, the petitioner expands on the previously submitted job duties of the proffered position. The petitioner indicates that due to the complexity of the job duties handled by the position, the proffered position is a professional one and the evidence clearly indicates that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

As discussed above, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the public relations specialist position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on a printout out from the National Communication Association (NCA) web site. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The information from the NCA merely discusses communications as a field and different careers in communication. This information does not support the claim by the petitioner that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has provided no evidence that organizations similar to the petitioner require a degree in a specific specialty for the position of a public relations specialist. Consequently, the opinion letter fails to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

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 specific 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. The petitioner provided an opinion letter in which the author states “[v]irtually all public relations positions, even those at entry level, require a minimum baccalaureate degree. At a public/relations management level, such a degree is absolutely essential.” The author indicates that the position requires a baccalaureate degree in a related specialty and that a communications related discipline is an appropriate specialty. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties parallel those in the *Handbook* for a public relations specialists, an occupation that accepts candidates with a broad range of baccalaureate degrees. The petitioner therefore fails to establish the fourth criterion.

Additionally, the director determined that the beneficiary was not qualified to perform the duties of the specialty occupation. However, as discussed above, the proffered position is not a specialty occupation; therefore, the beneficiary's qualifications do not need to be addressed.

Therefore, for the reasons related in the preceding discussion, 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.

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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.