



U.S. Citizenship
and Immigration
Services

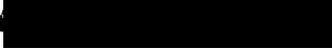
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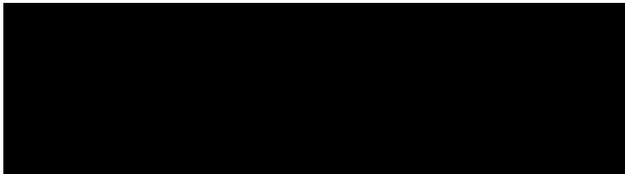
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FILE: WAC 04 076 52071 Office: CALIFORNIA SERVICE CENTER Date: **AUG 16 2005**

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:



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 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 business providing web-based technology to design-build industries that allows users to have direct input on and control over project design, development and modification. It seeks to employ the beneficiary as a public relations specialist. The director denied the petition because he determined that the record did not establish the proffered position as 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) previous counsel's response to the director; and (4) Form I-290B, with previous counsel's brief. 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, the 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 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:

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 it seeks the beneficiary’s services as a public relations specialist. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s January 12, 2004 letter of support accompanying the Form I-129; and previous counsel’s March 17, 2004 response to the director’s request for evidence. As described by previous counsel, the specific duties to be performed by the beneficiary are as follows:

- Plan, research and prepare written materials for distribution to the public, which includes trade show publications, press releases and fact sheets on the petitioner’s innovative developments; write targeted letters to industry executives about the petitioner’s products and services (60 percent of the beneficiary’s time);
- Arrange and conduct seminars regarding the petitioner’s services based on a study of industry need (20 percent of the beneficiary’s time);
- Identify, plan, implement and market events designed to raise the petitioner’s profile (10 percent of the beneficiary’s time); and
- Consult trade publications to learn about trade shows and conventions, and read trade journals to study information on trends, as well as maintain an on-going relationship with editors and industry analysts (10 percent of the beneficiary’s time).

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO first turns to 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; and 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 considered by CIS when determining these criteria include: whether the Department of Labor’s (DOL) *Occupational Outlook Handbook (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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In his denial, the director found the proffered position to be that of a public relations manager, as described in the 2004-2005 edition of the DOL *Handbook*, and, as a result, concluded that a baccalaureate or higher degree, or its equivalent, was not required to perform those duties. On appeal, previous counsel contends that the employment described by the petitioner most closely resembles that of a public relations specialist, not a public relations manager. The AAO agrees and withdraws the director’s finding that the proffered position is that of a public relations manager.

Although, there are significant similarities between the occupations of public relations manager and public relation specialist, the proffered position is more closely aligned to the duties of the latter, as described at page 270 of the *Handbook*:

An organization’s reputation, profitability, and even its continued existence can depend on the degree to which its targeted ‘publics’ support its goals and policies. Public relations specialists -- also referred to as communications specialists and media specialists, among other titles -- serve as advocates for businesses, nonprofit associations, universities, hospitals, and other organizations, and build and maintain positive relationships with the public....

Public relations specialists handle organizational functions such as media, community, consumer, industry, and governmental relations; political campaigns; interest-group representation; conflict mediation; or employee and investor relations. They help an organization and its public adapt mutually to each other. However, public relations are not only about ‘telling the organization’s story.’ Understanding the attitudes and concerns of consumers, employees, and various other groups also is a vital part of the job. To improve communication, public relations specialists establish and maintain cooperative relationships with representatives of community, consumer, employee, and public interest groups, and with representatives from print and broadcast journalism....

Media specialists draft press releases and contact people in the media who might print or broadcast their material....

Public affairs specialists also arrange and conduct programs to keep up contact between organization representatives and the public.... These media specialists represent employers at community projects... In addition, they are responsible for preparing annual reports and writing proposals for various projects....

In large organizations, the key public relations executive...may develop overall plans and policies with other executives. In addition, public relations departments employ public relations specialists to write, research, prepare materials, maintain contacts, and respond to inquiries.

People who handle publicity for an individual or who direct public relations for a small organization may deal with all aspects of the job. They contact people, plan and research, and prepare materials for distribution. They also may handle advertising or sales promotion work to support marketing.

On appeal, previous counsel, in responding to the director's classification of the proffered position as a public relations manager, contends that his findings relied solely on the *Handbook* and ignored the description of the proffered position provided by the petitioner. She asserts that not only does the *Handbook*, itself, warn against using it as "a guide for determining formal job evaluations," but that CIS is proscribed from relying on "standardized government classification systems such as the *Occupational Outlook Handbook*," citing the findings of *Unico American Corp. v. Watson* ___ F. Supp. ___. CV No. 896958 (C.D. Cal. March 19, 1991). The AAO does not agree.

While the AAO concurs with counsel that the proffered position is most closely aligned with that of public relations specialist, it does not follow that the director's determination that the proffered position was that of a public relations manager ignored the duties of the proffered position provided by the petitioner. As acknowledged by previous counsel on appeal, both occupations have a similar focus, and the AAO finds them to be closely related. Several of the proffered position's duties involving the coordination of seminars and events are performed by both public relations managers and public relations specialists. The director's identification of the proffered position as a public relations manager clearly indicates that he did review the specific duties outlined by the petitioner for its proffered position.

The AAO notes the *Handbook's* caveat against using the information provided therein for determining "wages, hours of work, the right of a particular union to represent workers, appropriate bargaining units, or formal job evaluation systems." However, CIS does not rely on the *Handbook* for such information, but for its descriptions of the range of responsibilities and activities that may be associated with a particular occupation and the general educational requirements imposed on those seeking employment within that occupation. While the *Handbook* cannot address all aspects of all employment, its discussion of a broad range of occupational titles provides CIS with a valuable tool in assessing the nature of the various types of employment that U.S. employers seek to classify as specialty occupations under 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel also cites *Unico American Corp. v. Watson* ___ F. Supp. ___. CV No. 896958 (C.D. Cal. March 19, 1991), the unpublished decision of a federal district court in California. She asserts that the court's findings precluded the director from relying solely on the *Handbook* in reaching his determination in the instant case. While the AAO has dismissed counsel's contention that the director ignored the petitioner's description of its employment in reaching his decision, it also notes that counsel's claim regarding the findings of *Unico American Corp. v. Watson* are not supported by the record. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Absent documentation, the assertions of counsel will not satisfy the petitioner's burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, in contrast to the broad precedential authority of the case law of a U.S. circuit court, the AAO is not bound to follow the published decision of a U.S. district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

To make its determination as to whether the petitioner may qualify its proffered position as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position – the AAO turns to the *Handbook*, at page 271, for its discussion of the educational requirements imposed on those seeking employment as public relations specialists:

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. Some firms seek college graduates who have worked in electronic or print journalism. Other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business

Although counsel, on appeal, asserts that the *Handbook* establishes the employment of a public relations specialist as a specialty occupation, the above description of the types of backgrounds that qualify individuals for entry-level employment does not support counsel's contention. The *Handbook* does not indicate that employers normally impose a degree requirement on job applicants. Instead, it appears that individuals with proven communication skills may be hired solely on the basis of training or experience. As a result, the proffered position of public relations specialist does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner may qualify its position under either of the two prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a specific degree requirement is common to the industry in parallel positions among similar organizations or the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty.

In response to the director's request for evidence, previous counsel submitted six Internet job postings from a range of businesses seeking public relations specialists to establish that a degree is a standard requirement for employment in public relations work. However, of the six advertisements, five do not respond to the second criterion, which, as just noted, stipulates that a petitioner's degree requirement be established as an industry norm among organizations similar to the petitioner. These five job postings come from a property protection firm; a social services organization; a business that stated only that it provided generic IT media, services and research; a firm that offered no indication of its business operations; and a real estate company. None can,

therefore, be considered similar to that of the petitioner, which provides web-based technology to the design-build industry. The sixth job announcement comes from a software provider with business operations that appear similar to the petitioner's. However, the announcement indicates only that the employer requires a job applicant to have a baccalaureate degree. It does not specify that the applicant hold a baccalaureate degree in a field directly related to the work of public relations specialists, as required by CIS. As a result, it, too, fails to satisfy the requirements of the first prong of the second criterion. When a job can be performed by a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study.

The AAO notes, however, that even if this final announcement had imposed a specific degree requirement on applicants, a single Internet job announcement would be insufficient to establish the petitioner's degree requirement as an industry norm.

In response to the director's request for evidence, previous counsel also asserted she had contacted the public relations manager for the Public Relations Society of America, Inc. regarding degree requirements in public relations. As reported by counsel, this individual stated that "the majority of entry-level jobs require a baccalaureate level degree and, more specifically, public relations specialists must have a bachelor's degree." In support of these statements, previous counsel submitted a copy of the Society's brochure on public relations careers, which states that "[a] college degree is essential and a basic grounding in the liberal arts is strongly recommended." However, while relevant to these proceedings, counsel's statements and the submitted brochure also fail to satisfy the requirements of the second criterion.

Previous counsel's assertions regarding the statements made by the public relations manager for the Public Relations Society of America, Inc. are unsupported by any actual documentation. As previously discussed, in the absence of documentation, the assertions of counsel do not satisfy the petitioner's burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the statements attributed by previous counsel to the public relations manager and that are included in the Society's brochure on public relations careers indicate only a generic degree requirement in the liberal arts for public relations employment, rather than a degree in a specific specialty directly related to the work of public relations specialists, as required by statute and regulation. As already noted, when a job can be performed by a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*.

On appeal, previous counsel asserts that the second criterion does not require the petitioner to establish that a degree requirement is the norm within its own industry, only that it is a minimum realistic prerequisite for entry into the profession, and cites the findings of *Matter of General Atomic Company*, 17 I&N Dec. 532 (Comm. 1980). The AAO does not agree. The requirements of the first prong of this criterion clearly indicate that a petitioner must establish a degree requirement in "parallel positions" among "similar organizations." Further, *Matter of General Atomic Energy* – which focused on whether an individual with an

undergraduate degree in civil engineering was of distinguished merit and ability – is not probative for the purposes of these proceedings.

The AAO also concludes that the petitioner has failed to establish that its proffered position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. The petitioner has not claimed, nor offered evidence, to establish its proffered position as a specialty occupation on the basis of its complexity or uniqueness.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner's ability to establish that it normally requires a degree or its equivalent when filling its proffered position, as required by the third criterion, the AAO generally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, however, the petitioner has submitted no evidence to establish its normal hiring practices. In the absence of an employment history for the proffered position, the petitioner cannot establish that its proffered position qualifies as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. Although the petitioner has not asserted that the proffered position qualifies as a specialty occupation under the specialized and complex threshold of the fourth criterion, the AAO has, nevertheless, reviewed the duties of the proffered position, as described by previous counsel, to determine whether they reflect a higher degree of knowledge and skill than would normally be required of a public relations specialist or represent an amalgam of jobs that require different skills and qualifications. The duties of the proffered position appear no different than those routinely performed by the more than 150,000 public relations specialists who work in the United States. As a result, the AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, although the director's classification of the proffered position as that of a public relations manager has been withdrawn, 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.