

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3042
Washington, DC 20529



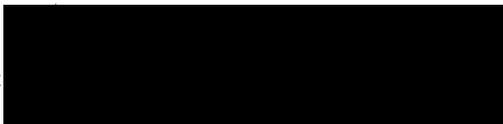
U.S. Citizenship
and Immigration
Services



DL

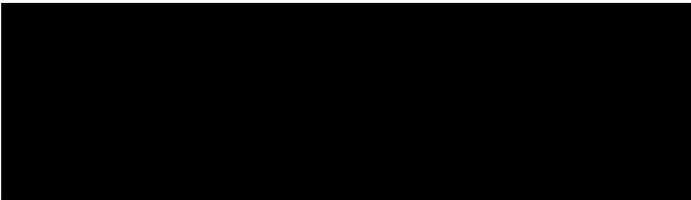
FILE: WAC 04 039 51876 Office: CALIFORNIA SERVICE CENTER Date: DEC 13 2005

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 nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a private duty nursing provider serving the Beverly Hills, Mid Cities, Orange County, San Fernando and San Gabriel areas of Southern California. The petitioner provides comprehensive nursing care, in addition to leasing and selling medical equipment and supplies. It desires to employ the beneficiary temporarily in the United States as a public relations specialist, at an annual salary of \$31,928, for three years. The director found that the proffered position, which is primarily that of a public relations specialist, was not a specialty occupation because the proposed duties are not so specialized and complex as to require a bachelor's degree in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that public relations specialists in the healthcare field are required to have a bachelor's degree, and that the job duties of the position are sufficiently specialized and complex to require the attainment of a bachelor's degree in marketing or a related area. Counsel also states that the requirement of a bachelor's degree is a common one for public relations specialists throughout the health care industry. The petitioner submits an expert opinion concluding that the position of public relations specialist requires a bachelor's level training in marketing, public relations, or a related area.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1). . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

Specialty occupation means 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

bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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) interpret 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-290B and supporting documentation; (2) the director's denial letter; (3) the director's request for additional evidence; (4) the petitioner's response to the director's request; and (5) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The petitioner is seeking the beneficiary's services as a public relations specialist. In determining whether a position qualifies as a "specialty occupation" for purposes of the nonimmigrant H-1B visa, CIS will examine whether there is a general requirement of specialized study for the position, coupled with whether the position has complex and discretionary duties normally associated with the position. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999).

As presented by the petitioner, the duties of the proffered position consist of identifying major communications and public relations issues, activities and techniques to provide management strategic programs in preparing informational, promotional and other marketing communication activities, whether internally or externally. The beneficiary's specific duties include gathering informational material through research or personal interview; the preparation of factual reports; planning and directing development of information designed to keep clients informed of the company's programs; researching, writing, producing and distributing press releases, articles, advertising, and the like; developing and maintaining internal and external communication with information sources; creating and maintaining a favorable public image for the

company; conducting public inquiry or survey programs; initiating personal contacts with media and representatives; and advising management on the public relations aspects of company's activities and policies.

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).

The AAO turns first 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; 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 Department of Labor's *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)).

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (Handbook) for its information about the duties and educational requirements of particular occupations. The *Handbook*, 2004-05 edition gives, on page 271, the following information about the qualifications and training of a public relations specialist:

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; in fact, internships are becoming vital to obtaining employment. . . . 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-information technology, health, science, engineering, sales, or finance, for example.

The *Handbook*, 2004-05 edition, does not indicate that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a public relations specialist job. Instead, the *Handbook* names several college major fields of study that would be suitable for entry into this particular career field, and also indicates that a public relations specialist may enter the field with no degree. Since the petitioner has not demonstrated a specific academic degree is required to perform the proposed occupation, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel for the petitioner states on appeal that an examination of the current job postings in the health care industry clearly establish that the requirement of a bachelor's degree is standard for a public relations specialist in the health care industry. The job postings are from a hospice care, a dermatologic association, a regional healthcare provider, a diabetes service provider, a medical products provider, a skilled nursing and

assisted living facility, and a technologies provider. The job postings from these employers are not persuasive. The petitioner has not established that the advertised positions are similar to the proffered position, a private nursing care provider with \$4.3 million in gross annual income. A meaningful comparison between the proffered position and the positions advertised cannot be made, as there is insufficient information about the size and organization, volume of business, or financial structure of the advertised positions and the proffered position. The advertisements do not establish a degree requirement is common to the industry in parallel positions among similar organizations. On appeal, counsel states that the Employment Development Department of the State of California requires that a public relations specialist in the healthcare industry have a degree. The information submitted does not indicate that the degree needs to be in a particular specialty. Thus, this information does not establish that the position is a specialty occupation under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The petitioner has not established that the proposed duties are unique from or more complex than a public relations specialists position in general, a position for which the *Handbook* indicates no requirement for a degree in a specific specialty.

The petitioner does not assert that it normally requires an individual with a degree in a specific specialty for entry into the proffered position, and offers no evidence concerning the petitioner's past hiring history with regards to this position. Consequently, the petitioner has not established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the duties of the proffered position appear to be ones that are regularly performed by a public relations specialist. They are not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The petitioner submits an expert opinion letter, dated August 2, 2004, from Dr. James S. Gould, Professor of Marketing, Pace University, that indicates that the position requires a baccalaureate degree in marketing, public relations, or a related area. Dr. Gould indicates that he reviewed an outline of the job duties of the position for the petitioner, a relatively large private duty nursing provider with 216 employees. The AAO notes that the record does not contain any evidence of the petitioner's income or number of employees and Dr. Gould does not indicate that he visited the site, reviewed company financial records, or interviewed the petitioner. Dr. Gould's opinion will not be accepted as the record contains no corroboration for the assumptions underlying his opinion, and he provides no evidence in support of his assertions. Going on record without supporting evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has not established the proffered position is a specialty occupation. Accordingly, the decision of the director shall not be disturbed.

The petitioner has not established that the proffered position qualifies as a specialty occupation. Thus, the beneficiary's qualifications are immaterial.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

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