

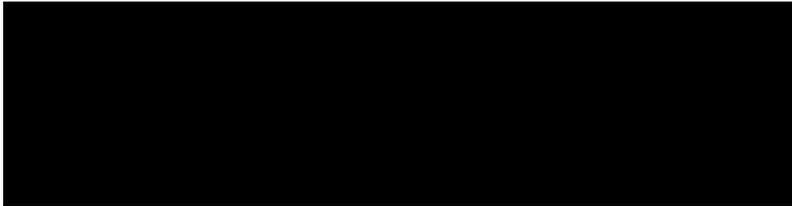
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 049 51311 Office: CALIFORNIA SERVICE CENTER Date: DEC 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:

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 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 a car parts distributor that seeks to employ the beneficiary as a public relations specialist and to classify him 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 proposed position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner submits a brief and previously submitted evidence.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

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 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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed 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 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 includes the I-129 petition, the petitioner's December 9, 2003, letter in support of the petition, and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: providing the petitioner with advice on strategies and policies of its programs; establishing and maintaining cooperative relationships with the petitioner's customers and

public interest groups; developing and implanting communication strategies and information programs; publicizing activities and events; maintaining media relations; coordinating the development of reference manuals with the petitioner's management; researching, developing, and managing the publication of reference manuals the petitioner needs for training current and future employees; coordinating the petitioner's activities with its staff; assuring production deadlines are met; planning coverage of upcoming events; developing, implementing, and evaluating communications strategies and programs designed to inform clients and the general public about the petitioner's products and events; gathering, researching, and editing material for internal and external audiences; preparing and overseeing the preparation of reports, briefs, presentations, and press releases; developing and organizing workshops, meetings, ceremonies, and other events for publicity and information purposes; researching market conditions in the territorial jurisdiction of the petitioner's franchise to determine potential sales of product service; and gathering information on competitors, prices, sales, and methods of marketing and distribution.

The director requested additional evidence including a more detailed job description, a copy of the petitioner's current business license, an educational credentials evaluation, school transcripts, and any evidence that the beneficiary was qualified to perform the duties of a specialty occupation.

In response, the petitioner supplied the following: a job description with a percentage breakdown for each duty, transcripts from the University of Santo Tomas, the Catholic University of the Philippines, a credentials evaluation from Bradley Spencer of e-ValReports, the beneficiary's resume, employment verification letters from two previous employers, an organizational chart, the petitioner's business license, and the petitioner's DE-6 Quarterly Wage Report.

The director found that the proposed position was not a specialty occupation. The director found that the duties of the position reflected those of a public relations manager, not a public relations specialist. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)* 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a bachelor's degree or its equivalent in a specific field of study. In addition, the director found that the beneficiary was not qualified to perform the duties of a specialty occupation because he does not hold the degree equivalent of a U.S. bachelor's degree.

On appeal, the petitioner asserts that the proposed position is a specialty occupation and that the beneficiary holds the equivalent of a U.S. bachelor's degree in communications.

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 proposed position is not a specialty occupation.

To determine 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 highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO agrees with the petitioner that the duties of the proposed position fall within those noted for public relations specialists and withdraws the director's finding that the position is that of a public relations manager. The *Handbook* describes what public relations specialists do in the following way:

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.

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.

To make the determination whether the proposed position qualifies as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) – a bachelor’s or higher degree or its equivalent is normally the minimum requirement for entry into the particular position – the AAO turns to the *Handbook*’s discussion of the educational requirements for 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

The *Handbook* does not indicate that employers normally impose a specific 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. The *Handbook* also indicates that public relations specialists do not need to possess bachelor’s degrees in communications or a related field. As a result, the proposed position of public relations specialist does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – that a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine whether a position qualifies as a specialty occupation under this criterion, CIS generally considers 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)). There is no evidence in the record to establish this criterion. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the employer normally requires at least a bachelor’s degree or its equivalent, in a specific field of study, for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner’s past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices. In the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position – the second alternative prong of the second criterion and the fourth criterion. The petitioner asserts that the complex nature of the proposed position requires that the beneficiary hold at least a bachelor’s degree or its equivalent, in communications or a related field. The duties of the proposed 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 petitioner has failed to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

As related in the discussion above, the petitioner has failed to establish that the proposed position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the beneficiary would not be qualified to perform the duties of the proposed position if the job had been determined to be a specialty occupation. The beneficiary's qualifications are immaterial as the AAO is dismissing the appeal because the job is not a specialty occupation.

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.