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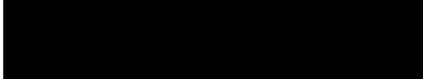
U.S. Citizenship  
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FILE: LIN 04 241 51759 Office: NEBRASKA SERVICE CENTER Date: DEC 22 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a software development company. It seeks to employ the beneficiary as a media relations marketing liaison and to classify her 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 on the grounds that the record did not establish that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the services in a specialty occupation.

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.

As provided in 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 decision; and (3) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a software development company, established in 1993, that develops and sells a wide variety of professional and gaming software including Windows customization programs, Blog Navigator, Universe Metal, Political Machine, DirectSkin, Galactic Civilizations, Object Desktop, and Stardock Central, and also offers the Object Desktop Network subscription service. The petitioner indicates that it has fifteen employees, gross annual income of \$2 million, and needs to hire the beneficiary as a media relations marketing liaison to coordinate U.S./European media relations and marketing. The duties of the position are described as follows:

[The beneficiary] will be responsible to plan and conduct public and media relations programs as well as marketing programs designed to create and maintain favorable public image both in the United States and in Europe. [The beneficiary] will be responsible to plan and direct development and communication of information designed to keep public informed of employer's programs and accomplishments. She will also be required to prepare and distribute fact sheets, new releases, photographs, and software demos to media representatives and other persons who may be interested in [the petitioner's] products and software. [The beneficiary] will be required to arrange for and conduct public-contact programs both in the United States and Europe designed to meet [the petitioner's] objectives. She will also be responsible to research data, create ideas, write copy, lay out artwork, contact media representatives both in the United States and abroad.

The beneficiary is qualified for the proffered position, the petitioner states, by virtue of her bachelor of science degree in management from the University of Lancaster, in Great Britain, granted in July 1995.

In his decision the director referred to the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, determined that the duties of the proffered position are similar to those of a public relations specialist as described in the *Handbook*, and cited information in the *Handbook* indicating that a baccalaureate level of study in a specific field is not the normal minimum requirement for entry into such a position. The director determined that the petitioner failed to establish that a degree requirement in a specific specialty is common to the industry in analogous positions. The petitioner did not show that it had previously required a specialty degree for the position, the director stated, or that the duties of the proffered position are so specialized and complex that baccalaureate level knowledge is required to perform them. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also found that the petitioner is not qualified to perform the services of the proffered position because her educational degree is not in a field directly related to the position. The director concluded that the beneficiary is not qualified, under 8 C.F.R. § 214.2(h)(4)(iii)(C), to perform services in a specialty occupation.

On appeal counsel asserts that the director erred in finding that the duties of the proffered position are similar to those of a public relations specialist. According to counsel, the primary focus of the job duties is on marketing and the position is closer to that of a market research analyst, as described in the *Handbook's* occupational category of market and survey researchers. Counsel cites information in the *Handbook* indicating that a baccalaureate or higher degree in a specialty field is required for entry into market research analyst positions, thus making it a specialty occupation. Even if the proffered position is classified as that of a public relations specialist, however, counsel contends that information in the

*Handbook* indicates that a baccalaureate degree is required for entry into the field. Counsel asserts that the proffered position qualifies as a specialty occupation under all four criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A), and that the beneficiary is qualified for the position based on her educational degree and relevant work experience.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook*, *supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The occupation of market research analyst is described in the *Handbook*, 2004-05 edition, at 173:

*Market, or marketing, research analysts* are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Market research analysts devise methods and procedures for obtaining the data they need. They often design telephone, mail, or Internet surveys to assess consumer preferences. Some surveys are conducted as personal interviews by going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers, under the market research analyst's direction, usually conduct the surveys.

After compiling the data, market research analysts evaluate it and make recommendations to their client or employer based upon their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Market research analysts might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

The foregoing duties of a market research analyst do not accord with the duties of the proffered position as described by the petitioner. The petitioner has submitted no evidence demonstrating that the beneficiary will be engaged in original market research; whether the beneficiary will conduct surveys and, if so, what types of surveys; the types of data to be collected; and the types of analysis to be shared with clients or the petitioner. The evidence of record, therefore, does not substantiate the petitioner's claim that the beneficiary would be performing the duties of a market research analyst. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *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)).

Based on the petitioner's description of the position, and consistent with its title – media relations marketing liaison, the AAO agrees with the director that the proffered position is essentially that of a public relations specialist, as described in the *Handbook*, 2004-05 edition, at 270:

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 . . . . 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.

Informing the general public, interest groups, and stockholders of an organization's policies, activities, and accomplishments is an important part of a public relations specialist's job. The work also involves keeping management aware of public attitudes and the concerns of the many groups and organizations with which they must deal.

Media specialists draft press releases and contact people in the media who might print or broadcast their material . . . . Sometimes, the subject is an organization and its policies towards its employees or its role in the community. Often, the subject is a public issue, such as health, energy, or the environment.

Public affairs specialists also arrange and conduct programs to keep up contact between organization representatives and the public. For example, they set up speaking engagements and often prepare speeches for company officials. These media specialists represent employers at community projects; make film, slide, or other visual presentations . . . and plan conventions. In addition, they are responsible for preparing annual reports and writing proposals.

People 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.

The *Handbook's* description of a public relations specialist encompasses most of the duties of the proffered position. As described by the petitioner, the media relations marketing manager is responsible for “public and media relations programs . . . maintain[ing] favorable public image . . . keep[ing] public informed of employer's programs and accomplishments . . . distributing [company literature] to media representatives . . . conduct[ing] public contact programs . . . [and] contact[ing] media representatives both in the United States and abroad.” All of these duties are public relations functions and their focus is primarily on the media. Thus, the duties of the proffered position are those of a public relations specialist.

As for the education and training required for the occupation, the *Handbook* states as follows:

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.

*Handbook, id.*, at 271. According to the *Handbook*, therefore, while a college degree and public relations experience “is considered excellent preparation for public relations work,” there is no industry standard requiring a college degree in a specific specialty directly related to public relations. As indicated in the *Handbook*, a variety of educational backgrounds is acceptable for entry into the occupation. Thus, the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into the position.

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no documentation in the record showing that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. The petitioner submitted numerous internet job announcements for market researchers, most of which specify that a specialty degree is required, but they are not persuasive evidence in this proceeding since the proffered position is not that of a market researcher. Thus, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor has the petitioner demonstrated that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Since the proffered position is newly created the petitioner has no history of requiring a specialty degree or its equivalent. Accordingly, the position does not meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the proffered position are so specialized and complex that knowledge usually associated with a baccalaureate or higher degree in a specific specialty is required to perform them. The duties of the proffered position, as described by the petitioner, do not exceed the scope of a typical public relations specialist, for whom baccalaureate level knowledge in a specific specialty is not ordinarily required.

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform

services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

Since the proffered position is not a specialty occupation, the issue of the beneficiary's qualifications to perform services in a specialty occupation is irrelevant to the disposition of the instant appeal and will not be addressed in this decision.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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