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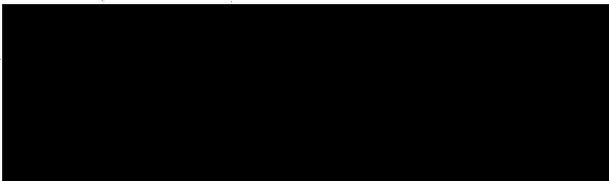
Dr

FILE: WAC 04 144 50842 Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

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 marketing and technology solutions to online marketers and publishers, with nine employees. It seeks to employ the beneficiary as a public relations representative and media consultant 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 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) counsel's response to the director; and (4) Form I-290B, with a letter from counsel and additional documentation. 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 representative and media consultant. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's April 8, 2004 letter of support accompanying the Form I-129; and an August 4, 2004 letter provided by the petitioner in response to the director's request for evidence. As described by the petitioner, the duties to be performed by the beneficiary would require her to:

- Plan, design and implement a campaign to provide information to advertisers and marketing companies concerning the specialized activities offered by the petitioner;
- Represent the petitioner in disseminating information about it and its services through all forms of media;
- Design and develop literature, brochures, fact sheets, press releases, etc. describing its operations and the benefits it provides to advertisers and marketing companies, and to the public;
- Work with media representatives from Internet and website organizations to present the operations of marketing and advertising clients in a favorable light and to highlight their activities;
- Design and develop promotional campaigns publicizing the petitioner's services and work with advertisers and marketing companies to develop a media campaign to promote their services; and
- Prepare reports for management review of her activities and make recommendations for future action.

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 specialist, but determined that it did not impose a specific degree requirement on the beneficiary. Following its review of the record, the AAO also finds proffered position to encompass many of the duties performed by public relations specialists who, as described at page 270 of the *Handbook*:

[s]erve as advocates for businesses, nonprofit associations, universities, hospitals, and other organizations, and build and maintain positive relationships with the public. As managers recognize the growing importance of good public relations to the success of their organizations, they increasingly rely on public relations specialists for advice on the strategy and policy of such programs.

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 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

...

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.

The educational requirements imposed on those seeking employment as public relations specialists are noted at page 271:

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

In that the *Handbook* indicates that employers will employ individuals as public relations specialists on the basis of experience, the AAO does not find the proffered position to qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching its decision, the AAO has considered the evidence submitted by the petitioner in response to the director's request for evidence – the letter from the Pepperdine University professor and that written by an account executive at a professional services company based in Venice, California. It finds both letters to be relevant to the issues before the AAO, but not to establish a baccalaureate degree as the minimum requirement for entry-level employment in public relations.

The letter from the chair of the communication division at Pepperdine University states his opinion that public relations employment requires a degree in advertising or communications. This opinion, however, is unsupported by corroborating evidence of the professor's authority to comment on the hiring requirements of U.S. employers seeking public relations specialists. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *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)). The letter provided by the account executive is also insufficient proof of a degree requirement. While it comes from an individual familiar with the field of public relations, it cannot, by itself, establish national practice on the part of U.S. employers. Accordingly, neither the professor's, nor the account executive's, opinions constitute sufficient evidence to overcome the *Handbook's* finding that there is no degree requirement normally imposed on individuals seeking entry-level public relations employment.

The AAO has also taken note of the petitioner's statements regarding the beneficiary's responsibility for supervising a junior account executive who holds a baccalaureate degree in business administration with an emphasis in marketing. While such a supervisory relationship would serve to support a degree requirement for the proffered position, the record contains no evidence of the petitioner's employment of the individual identified as the junior account executive on its organizational chart, nor any documentation of the degree the incumbent is said to hold. The organizational chart submitted by counsel in response to the director's request for evidence is not proof of the junior account executive's employment. Neither are its statements evidence of the incumbent's degree. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*. Therefore, the record does not establish that the beneficiary would be responsible for supervising a degreed subordinate.

To determine whether the petitioner's position meets the second criterion – that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty – the AAO has reviewed the seven Internet job advertisements counsel submits on appeal. These announcements do not, however, respond to the requirements of the criterion's first prong which stipulates that a degree requirement be established in parallel position among similar organizations.

Of the seven announcements, four are published by firms with business interests that either are not similar to the petitioner's or are not described. The three remaining advertisements come from two marketing communications firms and a firm devoted to radio advertising. Of the three, none offers a description of employment that is parallel to the proffered position. Accordingly, these Internet announcements do not establish the petitioner's degree requirement as the norm within its industry.

On appeal, counsel asserts that the opinions expressed in the previously discussed letters from the Pepperdine University professor and the California account executive are also evidence that the petitioner's degree requirement is the norm within its industry. The AAO does not agree. Absent corroborating evidence in support of their authority to define the hiring requirements within the public relations industry, these opinions are insufficient to satisfy the requirements of the second criterion's first prong.

The record also fails to establish that the 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 AAO finds the petitioner to have provided no evidence that would distinguish the proffered position, based on its complexity or unique nature, from similar nondegreed employment.

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 them is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner's ability to meet the third criterion, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position and copies of those employees' diplomas. In response to the director's request for evidence, the petitioner's August 4, 2004 letter stated that it had historically required a university degree in advertising, marketing or public relations for the proffered position, and that the beneficiary's predecessor held a degree in business administration with an emphasis in marketing. It also submitted a job announcement for the proffered position indicating requirements for a degree in marketing or advertising. On appeal, counsel points to the petitioner's letter and job announcements as proof that it normally requires a degree for the proffered position.

While the AAO acknowledges the petitioner's desire to employ a degreed individual for the proffered position, that desire does not establish the position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The record contains no evidence to support the petitioner's claims with regard to its previous employment of a degreed individual in the proffered position. Without such evidence, the petitioner's statements in its response to the director's request for evidence and its job announcement do not establish its normal hiring practices. Going on record without supporting documentary evidence is not sufficient for the 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's letter and job announcement are not proof of its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. To determine whether the proffered position may be established as a specialty occupation based on the specialization and complexity of its duties, the AAO has reviewed the descriptions of the proffered position provided by the petitioner in its letter of support and in its response to the director's request for evidence. It notes that the petitioner has indicated that the marketing and advertising services it provides its clients involve complex operations and require the beneficiary to develop programs for its clients that involve a knowledge and sophisticated understanding of advertising and marketing that can only be achieved through a university education in advertising or a related field.

These statements are, however, insufficient to establish the proffered position as a specialty occupation under the fourth criterion. *Matter of Soffici*. The AAO does not find the duties of the proffered position, as described by the petitioner, to require the beneficiary to possess greater knowledge or skill than that normally held by public relations specialists. Neither does it appear to be an amalgam of jobs that would require the beneficiary to possess skills beyond those needed for public relations employment. Therefore, the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons already noted, the record does not establish the proffered position as a specialty occupation. Accordingly, the AAO will 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.