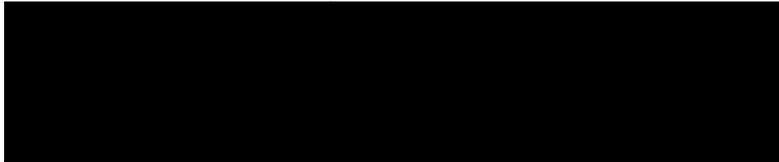


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



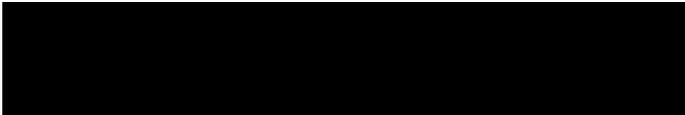
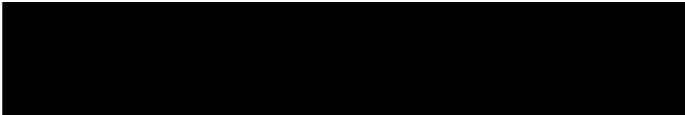
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

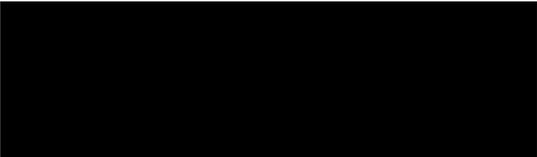


D 2

FILE:  Office: CALIFORNIA SERVICE CENTER Date: JUL 01 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, 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 an international trading company. It seeks to employ the beneficiary as a public relations specialist 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 ground that the proffered 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 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 request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (4) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as an international trading company that manufactures and distributes indigenous handcrafted corporate and gift items. In Form I-129 and an accompanying letter the petitioner stated that its business was established in July 2000, had two employees and gross annual income of \$550,000 by 2002, and sought the beneficiary's services as a public relations specialist to assume the tasks of promoting and/or advertising the company's products. In its response to the RFE the petitioner listed the duties of the proffered position, and the percentage of the beneficiary's time they would require, as follows:

60% Directing publicity programs to a targeted market group by means of writing press releases, formulating publicity plans and projections, implementing product campaign policies, and creating a profile for the company.

Analyzing and evaluating advertising and promotional plans to determine compatibility with the company's public relations effort.

Formulating communication methods – to inform the general public, interested groups, and stock owners – of the organization's policies, activities, and accomplishments.

Analyzing and observing social, economic, and political trends that will ultimately affect the company's reputation. Based on the trends, the beneficiary is expected to submit recommendations for the company's consideration.

Conducting extensive research methodology to specify the actual market for the company's products, particularly in the weak areas not being reached by previous and current promotional operations.

Conducting public relations studies on offers and suggestions received by petitioner to protect viability of the products and benefits to consuming public.

Collecting relevant data concerning the acceptability of the company's products to the target market through the use of questionnaires, telephone calls and personal visits to consuming public and media practitioners.

30% Formulating and implementing solutions on issues affecting the internal company communications such as [a] newsletter about employer-employee relations.

Preparing reports to keep management aware of public attitudes and concerns vis-à-vis the company's products and services.

Implementing developing accident-prevention and loss-control systems and programs for incorporation into operational policies.

Preparing and drafting speeches, arranging interviews, setting up speaking engagements, representing employer at public functions, and maintaining other forms of public contact on behalf of the company.

- 10%** Formulating effective communication and promotional gimmickry respecting the company's special events such as sponsorship, launching, and introducing new product lines.

Visiting social and civic organizations, hotel associations, and health organizations to acquire necessary data on specific population concentrations prone to use the company's product lines, both the U.S. mainstream and the Filipino-American community.

The petitioner asserts that a qualified candidate for the job must have a bachelor's degree in communication, journalism, public relations, or a related field. The beneficiary earned a bachelor's degree in broadcast communications from the Polytechnic University of the Philippines on April 3, 1986.

In his decision the director referred to information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* about public relations specialists indicating that a baccalaureate degree in the public relations field is not a normal, industry-wide minimum requirement for entry into the occupation. The director determined that the record failed to establish that the petitioner normally required applicants for the position to have a baccalaureate or higher degree in the field, that the duties and level of responsibility of the position indicated complexity or authority beyond that normally encountered in the occupational field, or that the job could not be performed by an experienced individual with a sub-baccalaureate level of training. The director concluded that the proffered position did not meet any of the criteria of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also stated that the documentation of record did not sufficiently identify the beneficiary, which cast doubt on her credibility.

On appeal the petitioner asserts that the information on public relations specialists in the DOL *Handbook* indicates that the decision as to whether a specialty degree is required must be decided by each company based on its particular needs. According to the petitioner, the AAO should not second guess its business judgement as to whether a degree in broadcast communications or a related specialty is required for its public relations specialist position. The duties of the proffered position are so specialized and complex, the petitioner contends, that they can only be satisfactorily and efficiently performed by an individual with a baccalaureate or higher degree in the field. As to the beneficiary's credibility, the petitioner asserts that previously submitted documentation conclusively establishes the beneficiary's identity.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* 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*, 712 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 public relations specialist is described in the *Handbook*, 2004-2005 edition, at page 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* occupational description of public relations specialists encompasses the proffered position described in this case. The *Handbook* goes on to describe the education and training required for the occupation:

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, especially when combined with work experience directly applicable to the job. 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).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence in the record that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Nor is there any documentation showing that the public relations specialist position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty. Thus, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

With respect to the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty for the position, as required for the public relations specialist to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. The petitioner asserts on appeal that the position meets this criterion of a specialty occupation, but has not furnished any documentation supporting the claim that the duties of the position are so specialized and complex that their performance requires baccalaureate level knowledge in a specific specialty. 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)). As far as the record shows, neither the duties of the position nor the particular circumstances of the petitioner's business distinguish the proffered position in any significant way from other public relations specialists, for whom knowledge associated with a degree in a specific specialty is not normally required.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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).

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.