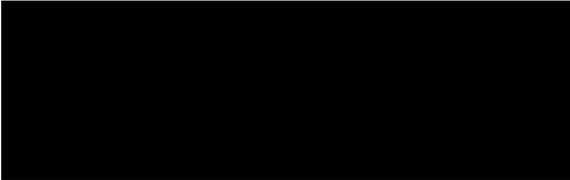


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MAR 18 2005

FILE: EAC 03 186 53013 Office: VERMONT SERVICE CENTER Date:

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 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 a sports bar and restaurant business. It 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 on the ground that the record did not establish that the proffered position is 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) additional documentation submitted in response to the director's request for additional evidence; (3) the director's decision; and (4) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as an Irish sports bar and restaurant with ten employees and gross annual income of \$600,000. It is seeking the beneficiary's services as a public relations specialist for itself and two other Irish sports bar/restaurants in New York City owned by the same individual, Dave Massey. The duties of the position, as described by the petitioner, include such activities as (1) communicating information about and promoting the establishments in local public media, (2) preparing and distributing fact sheets, news releases and photographs to media representatives, (3) purchasing advertising space and time, (4) organizing and conducting public-contact programs such as wine tastings and charity events, (5) representing the establishments at business and social functions, (6) conducting market research activities and recommending price and product changes based on the results, (7) overseeing development of a website, (8) working with travel agents and sports groups to coordinate and promote events, (9) coordinating publicity for parades, St. Patrick's Day, international soccer tournaments, and other events, and (10) working with the local community on issues of noise pollution, traffic and sidewalk congestion. The petitioner asserts that a qualified candidate for the job must have a bachelor's degree or the equivalent in communications or journalism. The beneficiary, a native of Ireland, earned an Advanced Diploma in Communications (Films & Broadcasting) from the Dublin Institute of Technology on November 29, 1997. According to World Education Services, Inc., an educational credentials evaluator incorporated in New York, the beneficiary's diploma is equivalent to a bachelor's degree in communications from a regionally accredited institution in the United States.

The director determined 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). Referring to the internet job announcements submitted by the petitioner, the director found that they differed from the petitioner's public relations position and were from companies of larger size and scope than the petitioner. Thus, no conclusion could be drawn that a baccalaureate degree was common to the industry in parallel positions among similar organizations. The director also found that the evidence did not demonstrate that a preponderance of the beneficiary's job duties were complex enough to be considered professional in nature. The director concluded that the proffered position did not qualify as a specialty occupation under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), because it did not require the theoretical and practical application of a body of highly specialized knowledge and at minimum a baccalaureate degree in the specific specialty.

On appeal counsel asserts that the *Occupational Outlook Handbook (Handbook)*, published by the Department of Labor (DOL), indicates that it is common for the industry to require public relations specialists to have a baccalaureate degree in public relations, journalism or communications. Although some companies may not require such a degree, counsel argues that CIS should be guided by the usual industry practice. Additional letters have been submitted from organizations involved in the food and hotel industry attesting that their public relations specialists are required to have a baccalaureate degree or the equivalent in communications or journalism, as well as some job announcements from companies seeking public relations specialists with baccalaureate degrees.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *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*, 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.

The occupation of public relations specialist is described, in pertinent part, 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), the record does not establish that the degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has submitted a series of job announcements from companies seeking to fill a variety of public relations positions. None of the companies is in the same line of business as the petitioner, however, and with one exception the advertisements indicate only that a bachelor's degree is required, without further specification. The petitioner has also submitted a series of letters from hotels or restaurants, using virtually identical language, asserting that they employ a public relations specialist, that they require a bachelor's degree or the equivalent in communications, journalism, or a related field for the position, and that they believe that to be the industry standard. The hotels, though in a broadly related field, do not represent the same line of business as the petitioner and would appear to be far larger in their scale of operation. As for the restaurants, the letters provide no details about the duties performed by their public relations specialists. The letters do not establish that a bachelor's degree in a specific specialty is the common industry standard for public relations specialists in restaurant/bars on the petitioner's scale. Accordingly, the record fails to establish that the proffered position qualifies as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor has the petitioner furnished any evidence that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. The director referred in his decision to a general manager at one of the petitioner's other restaurants that used to perform the public relations functions of the proffered position, but the record contains no evidence of that individual's degree, if any. Thus, the record does not show that the petitioner normally requires a bachelor's degree in a specific specialty for the position, as required for it 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. 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 that of any other public relations specialist in the restaurant/bar business, 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.