

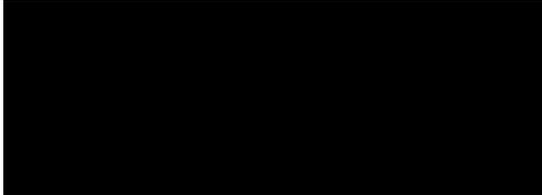
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



DZ

FILE: WAC 04 074 51167 Office: CALIFORNIA SERVICE CENTER Date: NOV 01 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, 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 broadcasting business that seeks to employ the beneficiary as a public relations representative. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief from the petitioner's vice president.

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.

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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and 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 representative. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 15, 2004 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: planning and directing development and communication of the petitioner's newly developed programs; arranging public relations efforts to meet the needs of individuals, businesses, and government agencies; illustrating and propagandizing the petitioner's image and policies via television and newsprint; arranging and conducting public-contact programs; advising on strategy and policy; representing the petitioner at public meetings, events, and conventions; writing, researching, preparing materials, maintaining contacts, and responding to inquiries; and coordinating with other departments regarding public relations affairs. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in public relations, sociology, public administration, or a related field.

The director found that the proffered position, which is similar to that of a public relations manager, was not a specialty occupation because the proposed duties are not so complex as to require a bachelor's degree in a specific specialty. 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 baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states, in part, that the proffered position is a public relations specialist, and is not a public relations manager. The petitioner cites to the *Handbook* to state that a bachelor's degree is required for a public relations specialist position, and states further that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 7, which according to the petitioner, requires a bachelor's degree to enter into the position. The petitioner also states that the proffered position, which requires that the beneficiary possess bilingual skills, is so complex and unique as to require a related bachelor's degree.

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 proffered position is not a specialty occupation.

The AAO turns first 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; 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 often considered by CIS when determining these criteria include: whether the *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the petitioner that the proffered position, which is similar to a public relations specialist, is a specialty occupation. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a public relations specialist job. Furthermore, although the director requested a copy of the petitioner's organizational chart, including information such as names of employees, job titles, description of duties, and educational level, the petitioner submitted only a general organizational chart of the petitioner's "controlling" company in Taiwan. Therefore, the organizational hierarchy of the U.S. petitioner remains unclear. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R.

§ 103.2(b)(14). The petitioner also has not established that the beneficiary's bilingual duties are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with the English and Chinese languages or a less extensive education, is necessary for the successful completion of its duties. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty, or its equivalent, is required for the position being offered to the beneficiary.

The petitioner's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for public relations jobs. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for public relations jobs in the marketing and biotechnology industries. The petitioner's industry, however, is not represented. Thus, the advertisements have no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, the petitioner states that the proffered position is newly established. The petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall 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.