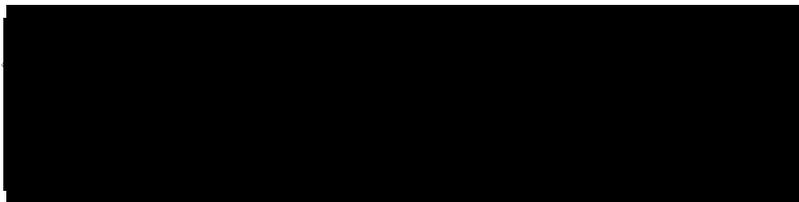


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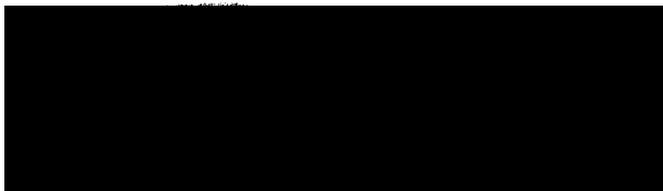


FILE: WAC 03 073 51092 Office: CALIFORNIA SERVICE CENTER Date: NOV 23 2005

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 rents and sells medical equipment. It seeks to employ the beneficiary as a public relations specialist/journalist. 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.

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 specialist/journalist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 9, 2002 letter in support of the

petition; and the petitioner's response to the director's request for evidence. According to the petitioner's December 9, 2002 letter, the beneficiary would perform duties that entail: analyzing market conditions; designing a public relations program to create and maintain a favorable image for the petitioner; supervising the preparation and distribution of fact sheets, news releases, and photographs to retailers and sales representatives; devising surveys; compiling research data, formulating marketing programs, and writing reports of the survey findings; creating, writing, and editing the petitioner's catalog; and writing press releases for trade shows and advertising copies. The petitioner indicated that the beneficiary is qualified for the job because she holds a bachelor's degree in mass communication.

The director found that the proffered position, which is similar to that of a public relations manager, was not a specialty occupation. Citing to the Department of Labor's (DOL) *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, counsel states, in part, that the proffered position is that of a public relations specialist, and is not similar to advertising, marketing, promotions, public relations, or sales managers. Counsel states further that the proffered position is that of a public relations specialist because it does not include or require any supervision duties. According to counsel, the DOL's *Handbook* and the *Public Relations Society of America* state that a college degree is essential for a public relations specialist position. Counsel also states that the record contains job advertisements to demonstrate that a baccalaureate degree requirement is common to the industry in parallel positions among similar businesses.

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. Although counsel asserts that the proffered position does not entail any supervision duties and, therefore, is that of a public relations specialist, the petitioner's president/owner describes the proposed duties in a letter, dated December 9, 2002, as "supervis[ing] the preparation and distribution of facts [sic] sheets, news releases and photographs." The record, however, contains no explanation for this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a

reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Furthermore, the petitioner has not demonstrated that the proposed duties entail the level of responsibility of a public relations specialist, such as informing the general public, interest groups, and stockholders of an organization's policies, activities, and accomplishments. *See the Handbook*, 2004-2005 ed. at 270. In view of the foregoing, the exact nature of the proffered position is unclear.

The AAO notes that the *Handbook* does not indicate that a baccalaureate degree in a specialty is a minimum requirement for entry into the field. The *Handbook* notes that there are no defined standards for entry into a public relations career. While many have a college major in public relations, journalism, advertising, or communication, some employers seek applicants with training or experience in a field related to the firm's business, such as information technology, health, science, engineering, sales, or finance. The wide range of acceptable degrees precludes consideration of the occupation as a specialty occupation under the first criterion.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for marketing and public relations specialists. 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. One of the advertisements is for a marketing specialist for a hospice organization, with duties that include fund-raising and special events. Another advertisement is for a public relations specialist for a healthcare provider that serves the western suburbs of Chicago and handles approximately 434,000 patient visits each year and manages the services of 800 physicians. Another advertisement is for a public relations specialist for a wholesale scrapbook company. 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 *Public Relations Society of America* publication regarding the public relations profession is noted. As discussed above, however, the petitioner has not demonstrated that the proposed duties entail the level of responsibility of a public relations specialist. Furthermore, similar to information in the *Handbook*, the publication does not stipulate that a baccalaureate degree in a specific specialty is required. 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. As the record indicates that the proffered position is a new position, the petitioner, therefore, has not established the criteria 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.