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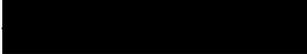
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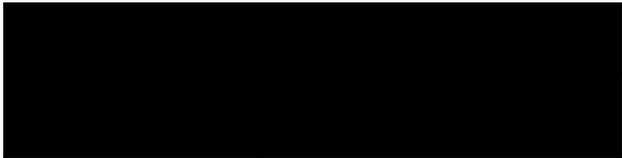


FILE: EAC 02 141 54593 Office: VERMONT SERVICE CENTER Date: OCT 03 2005

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 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 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 restaurant and bar that seeks to employ the beneficiary as a public relations manager. The petitioner, therefore, endeavors to classify the beneficiary 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 basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

The term “specialty occupation” is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 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 proposed position.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner’s letter of support offered the following information regarding the proposed position:

Among the many community-based initiatives we have sponsored, the Jaded Lounge Program is one of our most successful and continuing programs. . . .

For a period of 18 months, [the beneficiary] assisted in setting up the Jaded Lounge program and participating in the presentations as well. Preparing the Jaded Lounge monthly program requires effort and organization to make the event successful. The presenters must be located, the agenda must be organized, and the event must be advertised. Additionally, it all must happen early enough to ensure a successful attendance. I was previously responsible for setting up the Jaded Lounge Program and our other community initiatives. However, the responsibilities became overwhelming as our events gained popularity. Therefore, we made a corporate decision to hire a part time public relations manager to manage the Jaded Lounge Program and to pursue other interest activities on behalf of our corporation.

As a part time [REDACTED] [the beneficiary] will continue to organize the Jaded Lounge Program. In addition[,] he will assist in fund-raising efforts for non-profit organizations on behalf of our business. He will develop and pursue special projects designed to maintain our successful public image in the community, among other related duties. The minimum education requirement for this position is a Bachelor’s Degree [sic] is the industry standard for a professional member to represent our interests, [as] it is important that the individual have the proper credentials for the position. The position will require contact with the public officials, the media, corporate executives, community agencies[,] and other professional demeanor and the credentials to go with it [sic].

The petitioner offered the following additional information in response to the director’s request for evidence:

The job duties for this position are sophisticated and relate directly to the public visibility of our business. It requires the ability to develop marketing strategies, formulate project ideas[,] and carry them out to completion. This is so whether it is the Jaded Lounge Program, fund raising[,] special events[,] or any other creative marketing ideas our [REDACTED] [REDACTED] comes up with.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, the petitioner contends that the director erred in denying the petition, and that the proposed position is in fact a specialty occupation.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

As the petitioner has identified its proposed position as that of a public relations manager, the AAO turns first to the *Handbook's* discussion of advertising, marketing, promotions, public relations, and sales managers. The *Handbook* states the following:

*Public relations managers* supervise public relations specialists. (See the *Handbook* statement on public relations specialists.) These managers direct publicity programs to a targeted public. They often specialize in a specific area, such as crisis management – or in a specific industry, such as healthcare. They use every available communication medium in their effort to maintain the support of the specific group upon whom their organization's success depends, such as consumers, stockholders, or the general public. For example, public relations managers may clarify or justify the firm's point of view on health or environmental issues to community or special interest groups.

Public relations managers also evaluate advertising and promotion programs for compatibility with public relations efforts and serve as the eyes and ears of top management. They observe social, economic, and political trends that might ultimately affect the firm and make recommendations to enhance the firm's image based on those trends.

Public relations managers may confer with labor relations managers to produce internal company communications – such as newsletters about employee-management relations – and with financial managers to produce company reports. They assist company executives in drafting speeches, arranging interviews, and maintaining other forms of public contact; oversee company archives; and respond to information requests. In addition, some handle special events such as sponsorship of races, parties introducing new products, or other activities the firm supports in order to gain public attention through the press without advertising directly.

As noted above, the *Handbook* indicates that public relations managers supervise public relations specialists. The *Handbook* offers the following information regarding the duties of public relations specialists:

An organization's reputation, profitability, and even its continued existence can depend on the degree to which its targeted "publics" support its goals and policies. 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. 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. They help an organization and its public adapt mutually to each other. However, public relations are not only about “telling the organization’s story.” 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.

The *Handbook* states the following in regard to the educational qualifications required for public relations managers:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job. For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration, with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous. . . .

For public relations management positions, some employers prefer a bachelor's or master's degree in public relations or journalism. The applicant's curriculum should include courses in advertising, business administration, public affairs, public speaking, political science, and creative and technical writing

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists. In small firms, where the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

Finally, the *Handbook* offers the following information regarding the educational background necessary for employment as a public relations specialist:

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.

The proposed position seems to combine the duties of both a public relations manager and a public relations specialist. For example, the petitioner asserts that the beneficiary would direct the petitioner's fundraising activities and, in this sense, would in fact perform as a public relations manager. On the other hand, the *Handbook* clearly states, in its discussion of the duties of public relations managers, that such managers "supervise public relations specialists," a role that is not encompassed by the duties of the proposed position.

However, the question of whether the duties more closely resemble those of a public relations manager or those of a public relations specialist is immaterial to the issue of whether the proposed position qualifies for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry – as neither position qualifies as a specialty occupation under this criterion.

The *Handbook* indicates that most public relations manager positions are filled on the basis of experience (most positions "are filled by promoting experienced staff or related professional personnel"). A broad range of baccalaureate degrees is acceptable to many employers. Moreover, the fact that some employers "prefer" a degree does not rise to the "normally required" provision imposed by the regulation. As such, public relations managers do not normally require a baccalaureate degree in a specialty as a minimum requirement for entry into the profession under the first criterion.

Nor do public relations specialists normally qualify for classification as specialty occupations. While the *Handbook* does say that a college degree is "excellent preparation" for a career in this field, it does not require a particular course of study as the minimum requirement; it specifically states that "[t]here are no defined standards for entry" into the field. Therefore, public relations specialists do not normally require a baccalaureate degree in a specialty as a minimum requirement under the first criterion, either.

Thus, regardless of whether the proposed position is considered a public relations manager or a public relations specialist, it does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

On appeal, counsel submits two letters: one from [REDACTED] dated May 20, 2003, and another from [REDACTED] dated September 6, 2002,<sup>1</sup> and contends that these letters prove that the petitioner's degree requirement is an industry standard. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations. The petitioner must also establish that the degree requirement be in a related specialty.

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<sup>1</sup> The AAO notes that the letter from [REDACTED] was already contained in the record of proceeding; counsel also submitted this letter in response to the director's request for evidence.

The writers of both letters assert that bachelor's degrees are required for entry into the field. [REDACTED] states that she "would in no instance hire someone without a college degree for any job in public relations. . . ." While she states that it is important that the person have a degree in liberal arts, journalism, marketing, communications, or a related specialty, she states that when hiring, she looks for a college degree, without specifying the field of study required. [REDACTED] states the following:

As a final point, I wanted to confirm that I would never consider hiring a public relations/marketing or advertising specialist who did not possess a bachelor's degree. This is not a personal preference. It is the industry standard. I am in regular contact with my peers in advertising agencies throughout the country. I can confirm, without hesitation, that a [b]achelor's degree is the minimum requirement for an entry[-]level position in our industry. If a business can afford to hire a professional, it is appropriate to hire an individual whose credentials are consistent with [the] industry standard.

[REDACTED] does not indicate that the degree need be in any particular specialty. Thus, neither letter establishes a degree requirement in a specialty as an industry standard.

Neither author offers any evidence, such as surveys, industry studies, or other documentary evidence to support their assertions. Moreover, no evidence has been presented to establish that the author of either letter works in an organization similar in scope or scale of operations to the petitioner, a restaurant and bar with 21 employees. Simply going on record without supporting documentary evidence is not sufficient for 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)). CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The duties of the proposed position do not support such a finding, as they are quite similar to those of public relations managers and public relations specialists, as discussed in the *Handbook*, which do not require a degree in a specialty. The record contains no documentation to support a finding that the proposed position is more complex or unique than public relations managers or public relations specialists at other, similar organizations.

Therefore, the petitioner cannot establish that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine a petitioner's ability to meet this criterion, the AAO normally 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. No evidence has been submitted, nor has the petitioner contended, that the position qualifies as a specialty occupation under this criterion.

It does not appear as though the petitioner has ever hired anyone to fulfill the duties of the proposed position, which would preclude approval of the petition under this criterion. The AAO does note that counsel asserts on appeal that the owner of the petitioning entity has been performing the duties to be performed by the beneficiary. However, no evidence is presented regarding the owner's educational background.

Accordingly, the proposed position does not qualify as a specialty occupation under 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) – that 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. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than public relations managers or public relations specialists in other, similar organizations. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the director was correct to deny the petition.

The petitioner has failed to establish that the position qualifies for classification 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.