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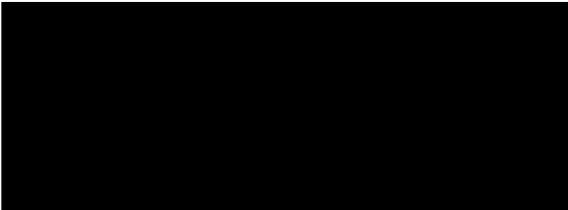
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FILE: WAC 04 030 51183 Office: CALIFORNIA SERVICE CENTER Date: SEP 16 2005

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 director of the California Service Center 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 operates a convalescent hospital. It seeks to hire the beneficiary as a public relations specialist. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a public relations specialist. Evidence of the beneficiary’s duties includes: the Form I-129; an October 15, 2003 letter of support from the petitioner; and counsel’s April 12, 2004 response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail (1) planning, developing, implementing, and evaluating the company’s public relations program, developing programs to analyze problems and opportunities, defining goals, identifying the public, and recommending and planning activities; developing and enhancing positive images for the employer; building and maintaining a carefully planned relationship with the public, using various types of media such as publications, special reports, videos, and multimedia programs to influence the way the employer is viewed by the public; developing annual publicity and public relations plans, goals and objectives; determining the best approach to implement multi-media communications plans (25% of time); (2) researching public opinion through newspaper questionnaires; selecting market and audiences and evaluating various demographic information, audience responses and inquiries to determine media and program success; researching facts through interviews, library materials, informal conversations, and survey opinion research (15% of time); (3) writing and editing informational materials for internal and external distribution, such as reports, news releases, brochures, speeches, video, scripts, magazine articles, product information and technical materials, newsletters, and other management communications; developing content, making decisions regarding layout, and using design elements effectively; selecting media and coordinating the posting or distribution of information; planning the content and theme of publications and other informational materials, determining the format, evaluating the cost and distribution options; establishing systems for the distribution of information to newspaper, broadcast, general and trade publications (20% of time); (4) planning news conferences, convention exhibits, anniversary celebrations, award programs tours, and special meetings (5% of time); (5) preparing and delivering speeches; writing speeches for company president; serving as community liaison to describe programs, presenting positions or explaining company’s affairs or interests; responding to public inquiries concerning the company; overseeing the development of and/or specifications for printing and other services; receiving guidance on public relations plans, goals and objectives for company president; and discussing sensitive and controversial issues involving the media with company president prior to release (15% of time); (6) gathering information from management, colleagues, and external sources to cultivate relationships; maintaining frequent external contacts with vendors to arrange services and with representatives of the media, the community, and the public in order to respond to inquiries and present the company’s concerns (10% of time); (7) developing a realistic budget for public relations

activity; documenting list of anticipated expenses for all activities for the period of time covered; selecting the media; setting-up a timetable; putting public relations efforts on a proper schedule; carrying out the program; evaluating the results; and conducting periodical public relations audits (10% of time).

The petitioner indicated that the proffered position requires a bachelor's degree in a related field such as public relations and communications.

The director issued a request for information to establish that the position of public relations specialist is a common position required by similar organizations and that the petitioner's competitors normally require degrees for closely related positions. The director requested information about the petitioner such as a facility license, tax returns and quarterly wage reports.

In response to the director's request, counsel provided an occupation guide from the State of Virginia, an internet job posting, and a 2000 career exploration guide to support his contention that the proffered position qualifies as a specialty occupation. Additionally, the petitioner provided Form 941 quarterly wage reports and Federal Tax Form 1065, U.S. Return of Partnership Income, indicating gross receipts or sales of \$4,576,575.

In his denial, the director referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and found that the overwhelming number of duties, as described by the petitioner, were most similar to the duties of Advertising, Marketing, Promotions, Public Relations, and Sales Managers – occupations which do not normally require a baccalaureate level of study. The director found that the position did not meet any of the preceding criteria for classification as a specialty occupation.

On appeal, counsel contends the director's conclusions are erroneous and refers to the Department of Labor's *Occupational Information Network* (*O\*NET* Online). Counsel contends that the *O\*NET* contains more precise information on a specific occupational title because it covers more than 200 job titles. Counsel asserts that the *Handbook* covers about sixty occupational groupings. Counsel refers to the *O\*NET* summary report on public relations specialists which indicates "most of these occupations require a four-year bachelor's degree, but some do not." Counsel asserts that more than 50% of the public relations specialist positions require a four-year degree.

The *O\*NET* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The *O\*NET* system supercedes the seventy-year old *Dictionary of Occupational Titles* (*DOT*). The *O\*NET* database is a comprehensive source of descriptors, with ratings of importance, level, frequency or extent, for occupations that are key to the economy. *O\*NET* descriptors include: skills, abilities, knowledge, tasks, work activities, work context, experience levels required, job interests, and work values/needs. It does not describe the amount of training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the AAO does not rely on *O\*NET* information.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, and, accordingly, considered the evidence of record in the light of the 2004-2005 edition of the *Handbook*. Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of a public relations specialist in the *Handbook*. According to the *Handbook*, 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. The *Handbook* notes that 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.

According to the *Handbook*, 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. This is similar to the proffered position in that the duties include, among others, serving as community liaison to describe programs, presenting positions or explaining company’s affairs or interests; and responding to public inquiries concerning the company.

With respect to the educational qualifications required of public relations specialists, the *Handbook* states:

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 ability to communicate effectively is essential. 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.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the public relations specialist position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to an internet job posting for a public relations specialist. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The advertised position is not parallel to the proffered position and indicates that a bachelor’s degree in a relevant field is important. The job posting does not indicate that a bachelor’s degree is required. Additionally, the nature of the advertising company is unknown. Consequently, the posting fails to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform

them is usually associated with the attainment of a baccalaureate or higher degree. The duties parallel those in the *Handbook* for a public relations specialist, an occupation that does not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Therefore, for the reasons related in the preceding discussion, 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.