

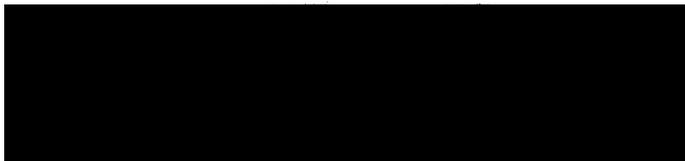
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

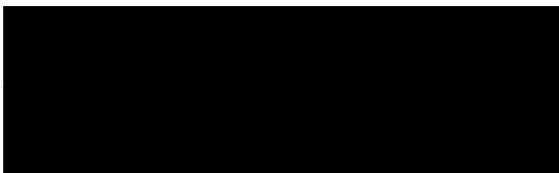
FILE: SRC 04 210 51377 Office: TEXAS SERVICE CENTER Date: **AUG 18 2006**

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, Chief
Administrative Appeals Office

DISCUSSION: The director of the Texas 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 is a newly established sports marketing and events planning company, with one employee. It seeks to employ the beneficiary as an assistant public relations specialist. The director denied the petition because she determined that the record did not establish the proffered position as 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 (RFE); (3) previous counsel's response to the RFE; and (4) Form I-290B, with previous counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the 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 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:

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 (5th 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.

Before addressing the application of the specialty occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the record of proceeding, the AAO will address several evidentiary aspects of the record that are relevant to more than one of those criteria. 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first comment upon the two letters submitted from third parties. For the reasons explained below, the AAO finds that the letters provide no information significant to the application of any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

By an August 25, 2004 document entitled “Expert Opinion Evaluation”, Russell Barclay, a professor of media studies and public relations, provided an opinion regarding the educational credentials required for the proffered position. The AAO assigns no significant evidentiary weight to the professor’s opinion, and the AAO finds that the opinion is not probative of any of the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The professor’s opinion is conclusory. The professor opined that:

[T]he skills, knowledge, and analytical thinking acquired through the acquisition of a Bachelor’s degree in Public Relations, Organizational Management, or related field is considered necessary by people in the industry seeking to hire an Assistant Public Relations Specialist, thus the degree is considered an industry standard for the position.

The professor does not provide a factual foundation for this opinion, but leaves it unsupported and unsubstantiated. Furthermore, the professor’s logic is defective: an unqualified amount of “people in the industry” with unidentified positions do not establish an industry standard for purposes of any of the criteria relevant to this position.

The professor does not provide a factual foundation for his declaration about what companies “seeking to employ an Assistant Public Relations Specialist in the field of Public Relations/Organizational Management” require of their prospective candidates. He cites no studies, personal experience in the industry, or other factual sources. Further, he provides no evidence of expertise in the area of organizational management, but, nevertheless, opines on the value of courses taught in that field and expounds upon their content.

Further, the professor’s letter indicates no substantial knowledge about the particular position about which he opines. Rather, the letter indicates that the professor’s knowledge about the proffered position is limited to skeletal and generic duty descriptions provided by the petitioner which convey little about the actual substantive work that the position would entail.

Using Department of Labor (DOL) letterhead and signing in his official capacity, the Director of the Division of Foreign Labor Certification (FLC) at the DOL’s Dallas Processing Center opines, in part, on how the DOL generally applies the specialty occupation provisions of the Act (presumably in accordance with the DOL regulation).

This DOL FLC official’s opinion is not probative on the issue of whether the position that is the subject of the instant position merits approval as a specialty occupation position. As a DOL FLC Director, this official is not authorized to issue advisory opinions on how CIS should conduct its adjudications. Furthermore, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifically states: Certification by DOL in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation.” This regulation also states “[T]he [CIS] director shall determine if the application involves a specialty occupation as defined in Section 214(i)(1) of the Act.” Thus, the specialty occupation issue in this petition is beyond the authority and outside the array of duties of the DOL official here opining.

The AAO recognizes that the DOL official expressly limits his opinion to how the DOL makes its determination in its limited role of deciding whether or not to issue a certified labor condition application. Accordingly, the AAO also finds that this information is neither relevant to nor probative of the specialty occupation issue before it, which must be resolved by the application of CIS regulations.

The AAO has considered the submissions from the professor and the DOL official but, for the reasons discussed above, finds them neither persuasive nor probative. Where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Next, counsel incorrectly interprets the specialty occupation statute and its implementing regulations as encompassing within the definition of specialty occupation a position whose performance requirements can be met by the knowledge attained by such a wide range of degrees as those that the instant record indicates are sufficient for the proffered position. According to the statements and submissions of the petitioner and counsel, that broad range of degrees includes baccalaureate degrees in marketing, English, Public Relations, Occupational Communications, Communications, Journalism, or a related field [sic] (page 2 of brief on appeal), or “a business related field” (page 5 of the brief on appeal). Counsel’s view is contrary to the plain

language of the statute. Counsel provides no precedent discussion to support her view, which is counter to the interpretation that CIS and the AAO has consistently applied to its own regulations.

As is clear in the language of the specialty occupation section of the Act, in order for a degree specified by a petitioner to qualify a position as a specialty occupation, that degree must be not merely acceptable or useful for the position. Rather, it must be required, or necessitated, by the position's specific performance requirements. Such is not the case here, where there is a broad range of acceptable degree fields whose breadth establishes that the position for which they are suitable does not require a body of highly specialized knowledge in a specific specialty.

The petitioner states that it seeks the beneficiary's services as a public relations specialist. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's July 23, 2004 letter of support accompanying the Form I-129; and counsel's September 3, 2004 response to the RFE. As described by counsel, the beneficiary will, under direct supervision, manage daily activities for various accounts and project events, and organizations in the area. The specific duties to be performed by the beneficiary are as follows:

- Obtain information and inspect facilities, equipment, and accommodations of potential performance venue;
- Schedule promotional or performance engagements for clients;
- Develop pricing strategies, balancing firm objectives and customer satisfaction;
- Establish and maintain cooperative relationships with representatives of community, consumer, employee, and public interest groups;
- Identify, develop, and evaluate marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors;
- Prepare or edit organizational publications for internal and external audiences; and
- Initiate market research studies and analyze their findings.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO first turns 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; and 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 considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (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)).

In her denial, the director found the duties of the proffered position, an assistant public relations manager, are not complex, as indicated in the 2004-2005 edition of the DOL *Handbook*, and, as a result, concluded that a baccalaureate or higher degree, or its equivalent, was not required to perform those duties. On appeal,

counsel contends that the employment described by the petitioner is similar to that of a public relations specialist and that such employment requires a baccalaureate or higher degree, or its equivalent.

On the basis of its review of the entire record of proceeding the AAO concludes that the evidence of record about the proffered position does not establish any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the appeal will be dismissed and the petition will be denied.

Although there are significant similarities between the occupations of public relations manager and public relation specialist, the proffered position is more closely aligned to the duties of the latter, as described at page 271 of the 2006-2007 edition of the *Handbook*:

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....

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....

Public relations specialists draft press releases and contact people in the media who might print or broadcast their material....

Public relations specialists also arrange and conduct programs to keep up contact between organization representatives and the public.... These media specialists represent employers at community projects... In addition, they are responsible for preparing annual reports and writing proposals for various projects....

In large organizations, the key public relations executive...may develop overall plans and policies with other executives. In addition, public relations departments employ public relations specialists to write, research, prepare materials, maintain contacts, and respond to inquiries.

People who handle publicity for an individual or 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.

To make its determination as to whether the petitioner may qualify its proffered position as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position – the AAO turns to the *Handbook*, at page 272, for its discussion of the educational requirements imposed on those seeking employment as public relations specialists:

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 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

Although counsel, on appeal, asserts that the *Handbook* establishes the employment of a public relations specialist as a specialty occupation, the above description of the types of backgrounds that qualify individuals for entry-level employment does not support counsel's contention. The *Handbook* does not indicate that employers normally impose a degree requirement on job applicants. Instead, it appears that individuals with proven communication skills may be hired solely on the basis of training or experience. As a result, the proffered position of public relations specialist does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner may qualify its position under either of the two prongs of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – a specific degree requirement is common to the industry in parallel positions among similar organizations or the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty.

In response to the director's request for evidence, previous counsel submitted thirteen Internet job postings from a range of businesses seeking public relations specialists to establish that a degree is a standard requirement for employment in public relations work. However, none of the 13 advertisements respond to the second criterion, which, as just noted, stipulates that a petitioner's degree requirement be established as an industry norm among organizations similar to the petitioner. These 13 job postings come from: a Geo systems high tech software manufacturer; an Internet media research company; a child welfare services organization; a business that stated only that it provided online billing services; two firms that offered no indication of their business operations; a software provider with 310 employees worldwide; the American Institute of Certified Public Accountants; the American Academy of Family Health Physicians; a healthcare marketing company; a communications company with 11,000 employees worldwide; a multi-national information technology conglomerate with operations in over 100 countries; and a power company which is a subsidiary of a large corporation. These Internet job announcements are insufficient to establish the

petitioner's degree requirement as an industry norm. The petitioner is a newly established sports marketing and events planning company with one employee.

Also, six of the advertisements indicate only that the employer requires a job applicant to have a baccalaureate degree. They do not specify that the applicant hold a baccalaureate degree in a field directly related to the work of public relations specialists, as required by CIS. As a result, these fail to satisfy the requirements of the first prong of the second criterion. When a job can be performed by a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study.

The AAO also concludes that the petitioner has failed to establish that its proffered position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. The petitioner has not claimed, nor offered evidence, to establish its proffered position as a specialty occupation on the basis of its complexity or uniqueness.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner's ability to establish that it normally requires a degree or its equivalent when filling its proffered position, as required by the third criterion, the AAO generally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, however, counsel has stated that the position is new. In the absence of an employment history for the proffered position, the petitioner cannot establish that its proffered position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. Although the petitioner has not asserted that the proffered position qualifies as a specialty occupation under this specialized and complex threshold of the fourth criterion, the AAO has, nevertheless, reviewed the duties under this criterion. As evidenced in the list of duties extracted from the record at pages 3 and 4, the petitioner has limited its description of the proposed duties to generalized terms that do not develop any substantive details of actual work that would be performed, so as to establish a level of specialization and complexity that would be associated with at least a bachelor's degree in a specialty.

As previously noted, the AAO requires information regarding the specific duties of a proffered position, as well as the nature of the petitioning entity's business operations, to make its determination regarding the position's degree requirements, if any. In the instant case, the record offers a general description of the type of work to be performed, rather than a description of the proffered position's duties as they relate to the petitioner's business. As the petitioner has provided no comprehensive description of the specific tasks to be performed by the beneficiary, the record contains no evidence to establish the specialized and complex nature of those tasks. Therefore, the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, although the director's classification of the proffered position as that of a public relations manager has been withdrawn, 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.