



U.S. Citizenship
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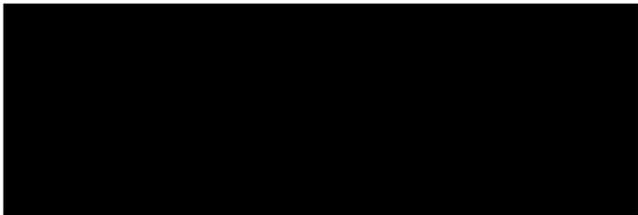


FILE: WAC 06 202 50596 Office: CALIFORNIA SERVICE CENTER Date: DEC 13 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The director of the 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 non-profit educational/religious organization that seeks to employ the beneficiary as a part-time communications specialist. 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 because the proffered position is not a specialty occupation.

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 former counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with new counsel's brief. 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, 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) consistently 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.

The petitioner seeks the beneficiary's services as a part-time communications specialist. Evidence of the beneficiary's duties includes: the petitioner's May 12, 2006 letter in support of the petition and the petitioner's former counsel's July 19, 2006 response to the director's request for evidence. As stated by the petitioner, the proposed duties are as follows:

- Design, plan, execute, and oversee the printing, distribution, and marketing of all communications media of the ministry including the newsletter, website, publications, advertisements and other publicity, bulk mail correspondence, and program materials; and
- Confer with and assist the executive director in formulating and distributing public statements, press releases, speeches, and other correspondence.

The director found that the proffered position, which is similar to that of a public relations specialist, does not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2006-07 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 concluded 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 qualifies as a specialty occupation under at least two if not all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel also states that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for a communications specialist, the degree requirement is common in parallel positions in similar organizations, and the employer normally requires a degree or equivalent for the proffered position. As supporting documentation, counsel submits two expert opinions, excerpts from the *Handbook*, 2006-07 edition, and from the publication *The College Board Index of Majors and Graduate Degrees*, and evidence of the petitioner's executive director's educational background.

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 counsel that the proffered communications specialist/public relations specialist position is a specialty occupation. No evidence in the *Handbook*, 2006-07 edition, indicates that a baccalaureate or higher degree in a specific specialty is required for this position. The *Handbook* reports that there are no defined standards for entry into a public relations position. Counsel's additional citation to *The College Board Index of Majors and Graduate Degrees* is noted. This publication lists educational institutions that offer various degrees in communications, but does not stipulate a degree requirement for this position. The AAO cannot assume that the training that the programs provide establish the complexity of the proffered position. The record also contains website information from the *Public Relations Society of America (PRSA)*, which reports: "A college degree is essential and a basic grounding in the liberal arts is strongly recommended." This information confirms the position of the DOL in its *Handbook*, namely that there is no requirement of a baccalaureate degree in a specific specialty for a public relations position. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

Regarding parallel positions in the petitioner's industry, the record contains Internet job postings for public relations specialist and related positions. The listings provided either fail to offer meaningful descriptions of the positions advertised or rely on duties unlike the duties listed by the petitioner. The advertisers, which include the

international [REDACTED], the Association of J [REDACTED] the [REDACTED] [REDACTED] and the [REDACTED] are not similar to the petitioner's business. Nor do these job postings indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. It is noted that information on the petition and in the record reflects that the petitioner was established in 1977, has one employee and a gross annual income of \$150,733, and publishes a quarterly newsletter. The petitioner has not established that the duties listed in the advertisements, which include: interfacing with vendors and printers and supervising an administrative assistant; assisting and training the media staff; and drafting articles for corporate publication for the American College of Cardiology, are parallel to those outlined by the petitioner. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

The record also contains two expert opinions. One is from a university professor who supervises law students and graduate fellows who represent public interest groups before the Federal Communications Commission and the federal courts. The other is from the director of the Human Rights Campaign Religion and Faith Program, an organization working for lesbian, gay, bisexual and transgender equal rights. Both writers assert that positions such as the proffered position require a bachelor's or higher degree in communications. The record does not indicate that the writers have adequate knowledge of the facts presented. The opinions do not include a discussion of the proposed duties and/or the actual work that the beneficiary would perform within the context of this particular petitioner's business. The writers do not demonstrate knowledge of the petitioner's particular business operations. They do not relate any personal observations of those operations or of the work that the beneficiary would perform. Their opinions do not relate their conclusions to specific, concrete aspects of this petitioner's business operation to demonstrate a sound factual basis for their conclusions about the educational requirements for the particular position at issue. 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). As the opinions of the writers are not based on an adequate factual foundation, the AAO does not find them probative in this matter.

The record does not include sufficient evidence from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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, counsel states that the petitioner's executive director who holds a Master of Arts degree formerly conducted the duties of the proffered position. Again, this information confirms the position of the DOL in its *Handbook*, namely that there that is no requirement of a baccalaureate degree in a specific specialty for a public relations position. Moreover, the executive director of the organization would presumably have increased responsibilities in running the organization in addition to

performing the duties of the communications specialist/public relations specialist. The petitioner has not established that the position of executive director/communications specialist/public relations specialist is similar to that of the communications specialist/public relations specialist. The AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices. In view of the foregoing, the evidence of record does not establish this criterion.

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.

Counsel states, on appeal, that the proposed duties entail hypersensitive activity related to ministering to homosexual, lesbian, bi-sexual and transgender Roman Catholics and conducting that ministry within the precepts of the Roman Catholic Church. The information in the record about the proposed duties, however, does not establish that they exceed in scope, specialization, or complexity those usually performed by public relations officers, an occupational category for which the *Handbook* indicates no requirement for or usual association with a baccalaureate or higher degree in a specific specialty. Regarding the proposed duties that relate specifically to knowledge of the Roman Catholic Church, the petitioner has not demonstrated that these activities elevate the complexity of the proffered position to require a bachelor's degree in a specific specialty. 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 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.

Although the director did not make a specific determination regarding the eligibility of the beneficiary to perform H-1B level services, the AAO observes beyond the decision of the director, that while the record contains a copy of the beneficiary's U.S. degree, it does not contain a copy of the corresponding transcripts or other evidence demonstrating the beneficiary's qualifications as required by 8 C.F.R. § 214.2(h)(4)(iii)(C). Thus, CIS cannot assess the credibility of the evaluation of the beneficiary's academic education. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). For this additional reason, the petition will not be approved.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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.