



U.S. Citizenship
and Immigration
Services

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FILE: EAC 06 150 51869 Office: VERMONT 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 an international travel and tourism business that seeks to employ the beneficiary as a public relations 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 response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with 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 public relations specialist. Evidence of the beneficiary's duties includes: the petitioner's April 17, 2006 letter in support of the petition and the petitioner's May 24, 2006 response to the director's request for evidence. As stated by the petitioner, the proposed duties are as follows:

1. Collaborate with marketing staff to assess customer interest and needs to enhance customer satisfaction and profit in order to create press releases and other PR promotional materials;
2. Assess customer satisfaction, interest, and needs in order to improve the quality of services and to provide specialized customer service to the public and create PR materials for public consumption;
3. Confer with management to identify trends and key interest groups, and to provide advice on business decisions to enhance public image. Assist management in developing customer profiles assessing their interests and needs;
4. Develop and propose improvements to travel policies, programs, and procedures to increase the effectiveness of customer relations and to improve public image;

5. Confer with production and support personnel to produce or coordinate production of promotional materials and advertisements;
6. Act as spokesperson on behalf of the company, coordinate publicity in media, and monitor press coverage for publicity plans;
7. Research corporate client needs and make suggestions to management to improve public relations activities of the company; and
8. Give presentations on the petitioner's unique public relations methods to clients and act as liaison with the press on new products.

The director found that the proposed public relations specialist duties do not require a bachelor's degree in a specific specialty. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 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 reiterates the proposed duties and states, in part, that the director disregarded the evidence. According to counsel, the petitioner has satisfied all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the position of public relations specialist normally requires a bachelor's degree in psychology or a related field. Counsel also states that the record contains an industry letter written by a competitor in the same industry as evidence that the travel industry normally requires the minimum of a bachelor's degree in psychology or a related field, or an equivalent thereof, for the position of public relations specialist. Counsel states that this industry letter is supported by an advisory opinion, job advertisements, a variety of articles, and the petitioner's own hiring practices. Counsel also states that the petitioner normally requires a bachelor's degree for the proffered position and submits copies of the petitioner's public relations specialists' diplomas, transcripts, and W-2 forms as evidence. Counsel states that the evidence of record demonstrates that the proposed job duties are so specialized and complex as to require a bachelor's degree in a related field.

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 public relations specialist position is a specialty occupation or that the *Handbook* clearly demonstrates that a bachelor's degree in psychology, or a related field, is the normal requirement for employment as a public relations specialist. 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 citations to the online article from the website of the *American Psychological Association* and to the websites of various university psychology departments, are noted. While this information provides career possibilities for psychology majors, it does not stipulate a degree requirement for this position. The AAO cannot assume that the training that the programs provide establishes the complexity of the proffered 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, counsel submits Internet job postings for public relations specialists. 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 computer, Internet media, biopharmaceutical, mortgage, banking, and insurance businesses are not similar to the petitioner's travel and tourism business. Neither do these listings indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. Moreover, the majority of the advertisements do not specify a bachelor's degree in a specific specialty, thereby confirming the position of the DOL in its *Handbook*, namely that a public relations specialist position does not require a bachelor's degree in a specialty. 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 an opinion from a branch manager in the tourism industry. The writer asserts that a bachelor's degree in psychology or the equivalent in professional experience is required for a public relations specialist in the tourism industry. The writer, however, does not provide any evidence in support of this assertion. The writer does not rely on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor's degree in psychology or the equivalent in professional experience. 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)). The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. The AAO 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, 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).

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 all of the petitioner's staff and high-level personnel possess a bachelor's degree in their respective fields or equivalent experience. Counsel submits W-2 forms for the following three employees: [REDACTED], who are identified in the petitioner's May 24, 2006 letter as the petitioner's past and current public relations specialists. The record contains evidence indicating that [REDACTED] holds a bachelor's degree in sociology and [REDACTED] a holds a Bachelor of Arts degree with studies in international and cultural studies. The record as presently constituted, however, contains no evidence of [REDACTED] educational background. Further, the variety of degrees held by the two previous employees for whom degrees are provided corroborates the *Handbook's* statements that a variety of backgrounds and degrees will prepare a candidate for entry into the field. 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.

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 evidence of record, including an advisory opinion letter, demonstrates that the proposed duties are so specialized and complex as to require a related bachelor's degree. The advisory opinion letter from a university dean/psychology professor asserting that the proffered position requires a bachelor's degree in psychology or a related field, is noted. The record, however, does not indicate that the writer has adequate knowledge of this matter. The opinion does 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 writer does not demonstrate knowledge of the petitioner's particular business operations. He does not relate any personal observations of those operations or of the work that the beneficiary would perform. His opinion does not relate his conclusions to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for his 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 opinion of the writer is not based on a factual foundation, the AAO does not find it probative in this matter.

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. 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.