

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: LIN 05 128 50817 Office: NEBRASKA SERVICE CENTER Date: JAN 08 2007

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a long-term care nursing facility. It seeks to employ the beneficiary as a public relations representative/journalist. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the proffered position is not a specialty occupation and that the beneficiary's authorized stay terminated 51 days prior to filing this petition.

The record of proceeding before the AAO contains: (1) the March 23, 2005 Form I-129 and supporting documentation; (2) the director's April 29, 2005 request for further evidence (RFE); (3) counsel's July 11, 2005 response to the director's RFE; (4) the director's August 18, 2005 denial letters; and (5) the Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The first 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.

The petitioner seeks the beneficiary's services as a public relations representative/journalist. In a March 17, 2005 letter appended to the petition, the petitioner stated:

[The beneficiary] will be responsible for analyzing marketing conditions, and devise a public relations program designed to create and maintain a favorable public image for the firm, as well as promoting the services that we offer. She will collect data, research, draft[,] and edit fact sheets, new [sic] articles, editorials, newspaper columns and advertisements for submission to the various newspaper publications to publicize the firm's business activities. [The beneficiary] will create, write[,] and edit the firms brochures, newsletters and other advertising material, so as to make the services we offer appealing to the public. She will continue to prepare and distribute fact sheets and she will also purchase advertising space as required.

She will be given a [sic] wide decision-making latitude to responsibly manage the public relations budgets. She will prepare cost vs. benefit analysis on all programs to determine relative success or areas for improvement. She will promote, create[,] and enhance the company's image to the public by writing or selecting favorable promotional materials and releasing it through various communication media.

On April 29, 2005, the director observed that the Department of Labor's *Occupational Outlook Handbook (Handbook)* did not report that a baccalaureate or higher degree in a specialized area is a requirement for the position of public relations representative. The director requested that the petitioner provide documentary evidence that the proffered position met one of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In a July 11, 2005 response, counsel for the petitioner asserted that according to the *Handbook* employers require a bachelor's degree in public relations, journalism, advertising, or communications for a candidate to qualify for a public relations specialist position. Counsel also noted that the proffered position's duties closely align with that of a journalist, a position that the *Handbook* reports requires a bachelor's degree in journalism or other majors. Counsel submitted copies of seven Internet job advertisements and asserted that the advertisements submitted establish that a bachelor's degree is common in the industry in parallel positions among similar organizations. Counsel contended that although the petitioner has not previously hired an individual for the proffered position, it

requires the successful applicant to have a bachelor's degree. Counsel claimed that the duties of public relations specialist/journalist are so specialized and complex that the knowledge required to perform them are usually associated with that of a bachelor's degree. Counsel provided the petitioner's May 27, 2005 letter that outlines the proffered position's duties. The petitioner indicated that the day-to-day activities of this position include:

To study the objectives, promotional policies[,] and needs of the Company to develop public relations strategies that will influence the public opinion or promote ideas and services and report findings to Administration; (30%)

To conduct research, collect data, draft and edit fact sheets, news articles, editorials, newspaper columns and advertisements for submission to the various newspaper publications to publicize the Company's business; (10%)

To plan, direct and implement communication and informational programs to maintain favorable public perception of the Company's accomplishments and agenda; (30%)

To create, write and edit the Company's brochures and other advertising materials, so as to make the Company's service appealing to the public and prospective clientele; and (20%)

To maintain contacts and respond to inquiries for information about the Company. (10%)

On August 18, 2005, the director denied the petition determining that the *Handbook* did not report that a bachelor's degree in a specific specialty is the minimum requirement for entry into the occupation. The director observed that of the seven job postings submitted only three specified a degree in a specific field and that of the four remaining advertisements only one indicated that a degree in journalism or English would be preferred. The director found that the advertisements submitted did not adequately establish that a degree requirement is common to the industry. The director also determined that the petitioner had not substantiated its claim that all public relations specialists had bachelor's degrees and had not established that the proposed duties are so specialized or complex that the performance of the duties is associated with the attainment of a bachelor's or higher degree in a specific specialty. The director concluded that the record did not contain evidence that the proffered position met any of the criteria for a specialty occupation.

On appeal, counsel for the petitioner asserts that the *Handbook* clearly supports the proposition that specific courses and specialties are necessary for employment as a public relations specialist and that the *Handbook* infers that groundwork for a career in this occupation is dependent upon the type of employer for which the specialist will work. Counsel also submits a publication issued by the Public Relations Society of America on *The Public Relations Profession, Careers in Public Relations: An Overview* that reports: "[a] college degree is essential and a basic grounding in the liberal arts is strongly recommended" as academic preparation for a career in this field. Counsel contends that since a baccalaureate degree is clearly required prior to entry into a public relations representative position, the position is clearly a specialty occupation.

Counsel also disputes the director's interpretation of the Internet job postings submitted and asserts that all of the advertisements require, not just prefer, their candidates for public relations positions to possess a bachelor's

degree in public relations, communication, English, or a related field. Counsel also contends that skills such as persuasive writing, editing, research, advocacy, and public relations campaigns are uniquely learned and developed through a baccalaureate program and that the demands of the proffered position are so complex and unique to the petitioner, a nursing facility with 200 employees, that the incumbent must have a bachelor's degree in public relations or communication, or a related field or its equivalent. Counsel notes that although the petitioner has not previously employed an individual in this position, the petitioner requires that the individual in this position possess a bachelor's degree; counsel challenges the director's authority to question the petitioner's business judgment in this regard. Counsel asserts that a public relations representative is charged with devising programs that will foster and maintain a company's favorable image and that to properly perform the duties of the position, the public relations representative must have advanced knowledge of theoretical and practical applications of communications, procedures, and proper relations with members of the press and public. Counsel asserts only individuals who have baccalaureate degrees have adequate credentials to serve the petitioner's purpose and mission.

Counsel references the beneficiary's prior H-1B classification and although noting that the petitioner in this matter is not the same petitioner as the prior approval, asserts that approval should be granted.

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)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely relies on the *Handbook* for the educational requirements of particular occupations.

The AAO finds that the duties of the proffered position of public relations representative falls within the description of the occupation of a public relations specialist, as described in 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.

* * *

Public relations specialists draft press releases, and contact people in the media who might print or broadcast their material. Many radio or television special reports, newspaper stories, and magazine articles start at the desks of public relations specialists.

* * *

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 material for distribution. They also may handle advertising or sales promotion work to support marketing efforts.

To identify the educational requirements for employment as a public relations specialist, the AAO turns again to the *Handbook*, which 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 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

While the *Handbook* discusses both the types of degrees that may prepare individuals to seek employment as public relations specialists and the degree preferences of certain employers when seeking public relations specialists, it does not indicate that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the occupation. The fact that many individuals who seek employment as public relations specialists have bachelor's degrees in related fields and that some employers prefer to hire such individuals for their public relations openings does not satisfy the degree requirement set forth in the first criterion. Employer preference is not synonymous with the "normally required" language of the criterion. Likewise, although the publication issued by the Public Relations Society of America indicates a college degree is essential and recommends a basic grounding in the liberal arts as academic preparation for a career in this field, the authors do not further define the degree requirements. As observed above, CIS interprets the term "degree" to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. An emphasis on a generic degree in liberal arts is not the same as a degree in a specialized field of study. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). The occupation of public relations representative does not qualify as a specialty occupation as the evidence presented does not require that a baccalaureate or higher degree or its equivalent in a specific discipline is the normal minimum requirement for entry into the particular position.

The AAO concludes that the petitioner has not established that the position of public relations representative as described is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. The petitioner has provided seven job announcements including advertisements for: (1) a public relations specialist for a "high tech" company that requires a bachelor's degree in communications, public relations, marketing or related field; (2) a public relations specialist for a software company that lists a bachelor's degree in communications, journalism, English, or a relevant academic discipline under the "Your Knowhow" section of the advertisement; (3) a media

relations specialist for a "corporate marketing team" that requires a bachelor's degree and prefers the degree to be in journalism or English; (4) a public relations specialist submitted by a staffing service that notes a bachelor's degree with a minimum of 7 years corporate experience, but does not indicate if this is preferred or required; (5) a public relations specialist for an advertising agency and marketing communications firm that requires a BA/BS degree or above majoring in Journalism/English/Public Relations; (6) a public relations specialist for an undefined company that indicates a bachelor's degree is required; and (7) a public relations specialist for a Girl Scouts Council that does not list the type of academic qualifications necessary in the skills/qualifications section of the advertisement.

The AAO has reviewed the seven job announcements submitted and determines that the job announcements do not provide sufficient information to enable the AAO to conclude that the businesses advertising the positions are similar to the petitioner in size, number of employees, or level of business. Going on the 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 190 (Reg. Comm. 1972)). Specifically, the AAO finds that the job postings provide brief statements and only a broad overview of the various responsibilities associated with the positions advertised. The one job advertisement that provides a more detailed job description does not indicate the type of academic qualifications necessary for the position in the skills/qualification section, although the education level is indicated as a bachelor's degree. The AAO cannot conclude from this one job description that a degree requirement is the norm within the petitioner's industry. Moreover, neither counsel nor the petitioner has attempted to explain how the requirements of the disparate companies advertising for a public relations specialist relate to this particular petitioner. The job advertisements provided are insufficient to demonstrate that organizations advertising the positions are similar to the petitioner and its needs and requirements. The seven job advertisements are insufficient to establish an industry-wide standard.

Counsel contends that the skills of the proffered position are uniquely learned and may only be developed through a baccalaureate program and that the demands of the proffered position are so unique and complex to the petitioner that the incumbent must have a bachelor's degree in public relations or communication. A review of the evidence of record finds it insufficient to establish that the duties of a public relations specialist is a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from a similar but non-degree-requiring position. As observed above, the *Handbook* does not report that a degree is required but notes that a college education is excellent preparation for a career in public relations as well as noting that some employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business. The publication referenced by counsel, although indicating that a "college education is essential" also states that a basic liberal arts background is recommended and that internships in the field are stressed. This publication does not identify an industry-wide standard but suggests that broadly based education and practical experience is sufficient for entry into this field. The petitioner has not established that the occupation of a public relations specialist is so unique and complex that only an individual with a degree in a specific discipline can perform the duties associated with the position. Accordingly, the petitioner is unable to establish its position as a specialty occupation under either of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether the employer normally requires a degree or its equivalent for the position. The record reflects that the petitioner has not employed an individual in this position prior to offering the position to the beneficiary. The petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. The critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), whether 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. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO considers the duties of the position, not the occupation, or the industry-wide standard associated with the occupation. The petitioner in this matter, through counsel and its descriptions of the duties of the position, has provided sufficient independent and documentary evidence to establish that the public relations specialist position as it relates to the petitioner's specific business 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. The AAO finds that the attendant advertising, necessity of maintaining good public relations, and the extensive nature of the public relations involved in the petitioner's business require greater knowledge or skill than that routinely needed by public relations specialists to promote the goals of the businesses employing them. Further, the job, as described, suggests that it includes a combination of jobs that would require the beneficiary to have a unique set of skills not normally possessed by an ordinary public relations specialist. As a result, the AAO concludes that the petitioner has established that its proffered position meets the specialized and complex threshold of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record reflects that the beneficiary graduated from the University of Santo Tomas with a degree that has been determined to be equivalent to a Bachelor of Arts in Communications Studies awarded by a regionally accredited college or university in the United States. Thus, the beneficiary is qualified to perform the services of the specialty occupation.

The AAO notes that the beneficiary was previously approved to hold an H-1B classification. However, the records of proceeding resulting in approval are not before the AAO. Moreover, the approvals were granted for other petitioners. The AAO notes that each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The AAO declines to speculate on the evidence presented to support other petitioner's requests for this beneficiary to obtain H-1B classification.

The petitioner in this matter has offered sufficient evidence to establish that the proffered position is a specialty occupation. Thus, the director's decision regarding the issue of specialty occupation will be withdrawn. However, although H-1B eligibility has been determined, the director has also found that the beneficiary is ineligible for an extension of status. The director's determination regarding the beneficiary's ineligibility for an extension of status is not within the jurisdiction of the AAO; as such the determination on this separate issue cannot be appealed.

The petition will be approved. As always, 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 met that burden. As the issue of the beneficiary's ineligibility is not before the AAO, any appeal regarding this issue must be rejected.

ORDER: The appeal is sustained. The petition is approved. The appeal regarding the beneficiary's ineligibility for an extension of status is rejected.