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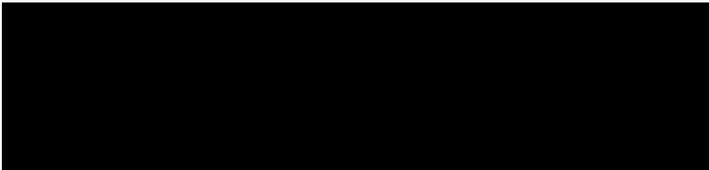
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U.S. Citizenship
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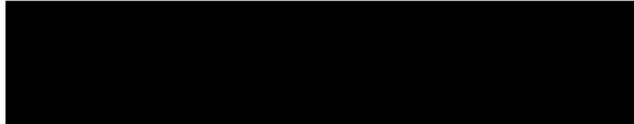
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FILE: EAC 03 138 54133 Office: VERMONT SERVICE CENTER Date: OCT 29 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and dismissed a subsequent motion. 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 wholesale distributor that seeks to employ the beneficiary as a public relations director. 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 on two grounds: (1) his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation; and (2) his determination that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. On appeal, the petitioner contends that the director erred in denying the petition.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) the petitioner's motion to reopen; (6) the director's dismissal of the petitioner's motion; and (7) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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 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:

[A]n 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 criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

The petitioner's March 31, 2003 letter of support stated that the duties of the proposed position would include consulting and leading the sales and marketing divisions in setting quotas and goals; developing powerful sales and client strategies; developing the overall sales process and tracking long-term results against set goals; studying the needs, objectives, and policies of the company in order to implement new and innovative ways of promoting the company's business in various types of media; searching, establishing, and cultivating relationships with local, national, and international media contacts, including, but not limited to, prominent industry publications and radio channels; serving as a media contact and spokesperson for the company's promotional events and activities; drafting and creating various communications plans and tactics for use with domestic and international clientele and providing strategic leadership in meeting the established plans' goals; providing extensive writing, in the form of opinions, assessments, press releases, case studies, company fact sheets, etc., in order to facilitate and improve both external and internal communication; cultivating and maintaining much-needed relationships with the local, national, and industry press; working closely with officials from major businesses, thus helping promote the company's sales and sustaining goodwill; expanding the petitioner's presence and sales in Russia and Ukraine; conducting research on international political markets, translating the results into appropriate informational material, and consulting the petitioner's C.E.O. regarding the degree of success and the appropriate methods of communication if those markets are entered; and providing a written synopsis on the monthly results of implementing particular strategies, promotional campaigns, and policies.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook's* discussion of the duties of advertising, marketing, promotions, public relations, and sales managers states the following:

Public relations managers supervise public relations specialists. (See the *Handbook* statement on public relations specialists.) These managers direct publicity programs to a targeted public. They often specialize in a specific area, such as crisis management – or in a specific industry, such as healthcare. They use every available communication medium in their effort to maintain the support of the specific group upon whom their organization's success depends, such as consumers, stockholders, or the general public.

For example, public relations managers may clarify or justify the firm's point of view on health or environmental issues to community or special interest groups.

Public relations managers also evaluate advertising and promotion programs for compatibility with public relations efforts and serve as the eyes and ears of top management. They observe social, economic, and political trends that might ultimately affect the firm and make recommendations to enhance the firm's image based on those trends.

Public relations managers may confer with labor relations managers to produce internal company communications – such as newsletters about employee-management relations – and with financial managers to produce company reports. They assist company executives in drafting speeches, arranging interviews, and maintaining other forms of public contact; oversee company archives; and respond to information requests. In addition, some handle special events such as sponsorship of races, parties introducing new products, or other activities the firm supports in order to gain public attention through the press without advertising directly.

In that the duties of the proposed position are similar to those of public relations managers as outlined by the *Handbook*, the AAO turns to the *Handbook's* discussion of the qualifications necessary for entry into the field. The *Handbook* states the following with regard to the educational qualifications required for public relations managers:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

* * *

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous. . . .

* * *

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists. In small firms, where the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires a showing that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the type of position being

proffered. The *Handbook* indicates that most public relations manager positions are filled on the basis of experience (most positions “are filled by promoting experienced staff or related professional personnel”). Moreover, the fact that some employers “prefer” a degree or that individuals possessing degrees “should have the best job opportunities” does not rise to this criterion’s standard of employers normally requiring at least a bachelor’s degree or its equivalent in a specific specialty. Nor does the fact that “some” employers have such a preference for a degree rise to the “normally required” standard. As such, public relations managers do not qualify as specialty occupations under the first criterion.

Moreover, employers that do require a bachelor’s degree do not require that it be in any particular field of study (“[a] bachelor’s degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable”). When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation.¹ See *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. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to require a degree in a specific specialty that is directly related to the proposed position.

The AAO will accord no weight to the information counsel submits from the Department of Labor’s *O*Net* system. *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. Its assessment (the JobZone classification) does not specify the particular type of degree, if any, that a particular position would require. Again, CIS interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

Similarly, the AAO accords no weight to the information counsel submits from the *Dictionary of Occupational Titles (DOT)*. As is the case with *O*Net*, the *DOT* 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 *DOT*’s assessment (the SVP rating) is meant only to indicate the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and does not specify the particular type of degree, if any, that a position would require.

Nor do the unpublished cases cited by counsel establish the proposed position as a specialty occupation. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

¹ The AAO also notes here that, in its June 27, 2003 response to the director’s request for additional evidence, the petitioner stated that it requires an individual with a degree in either business administration or political science in order to fill its position. As the petitioner finds a bachelor’s degree in business administration acceptable for the proposed position, it is precluded it from establishing the position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). *Matter of Michael Hertz Associates*.

For all of these reasons, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as 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 normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the job postings submitted by counsel in response to the director's request for additional evidence. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

The petitioner has not submitted any evidence to demonstrate that any of these job postings are from companies "similar" to the petitioner, a wholesale distributor. There is no evidence that the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Simply 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)). 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).

General Mills is a food processing company. The Texas Children's Hospital and Sentara Healthcare are medical services providers. The Santa Cruz County Conference and Visitors Council is a nonprofit organization promoting Santa Cruz County, California. McKesson Information Systems is an information technology company. QVC is a television network. The unnamed company advertising its vacancy through the Colorado Business Marketing Association is a "health related company."

Moreover, the job postings are too few to establish an industry-wide standard. Also, the information regarding the duties and responsibilities of the advertised positions is general and does not support a meaningful comparison of their actual performance and specialty knowledge requirements to those of the proposed position. Thus, while relevant to this proceeding, the job postings submitted by counsel are insufficient to establish the petitioner's degree requirement as an industry norm in parallel positions among similar organizations, and they do not satisfy the requirements of the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

On appeal, counsel states the following:

In essence, the adjudicator determined that the offered position does not qualify as a specialty occupation because Petitioner submitted no proof that other employers in the industry have the same requirements. This standard has been rejected by Federal Courts a long time ago.

However, counsel has misunderstood this basis of the director's decision. The director did not deny the petition on the basis of her determination that the petitioner must establish an industry standard in order to gain approval of its petition. Rather, as discussed previously, the director determined that the petitioner had not met its burden of proof under the first prong of the second criterion in establishing that its degree requirement is common to parallel positions in similar organizations. The AAO concurs with the director's findings in this regard: if the petitioner submits no evidence to establish that its degree requirement is common to parallel positions in similar organizations, then it clearly has failed to make such a demonstration.

Therefore, the proposed position does not qualify as a specialty occupation under the criteria set forth at the first prong of the second criterion.

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. It finds no evidence that would support such a finding, as the position proposed in the petition is similar to the public relations manager position described in the *Handbook*, which does not require a degree in a specific field of study.

Accordingly, the petitioner has not established its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine the petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

In its response to the director's request for additional evidence, the petitioner stated that it has had no choice in the past but to hire individuals with at least a bachelor's degree for this position. However, it did not submit any evidence, such as that delineated above, to document its assertion. Simply 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)). Accordingly, the director determined that the petitioner had failed to satisfy the third criterion.

On appeal, counsel states the following with regard to the director's determination that the petitioner failed to satisfy the third criterion:

Taking into account related employer-employee laws and practice, Petitioner could not afford to produce confidential and identifiable information for unrelated individuals to

the agency which has no regulatory or supervisory power over Petitioner. Petitioner, however, could easily produce the names and relevant degrees of people in question.

Again, simply 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)). Absent evidence that the petitioner satisfies the third criterion, CIS is unable to enter a finding that the petitioner has done so.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to have a higher degree of knowledge and skill than that normally expected of public relations managers in other, similar organizations. Therefore, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. There is no information in the record to support a finding that the proposed position is more specialized and complex than the public relations manager positions for which the *Handbook* indicates no requirement for the highly specialized knowledge associated with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the director was correct to deny the petition.

The director also found that the petitioner had failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Although the director requested evidence of the beneficiary's qualifications to perform the duties of a specialty occupation in his request for additional evidence, the petitioner failed to provide it. The

petitioner does not address this ground of the director's denial on appeal, nor does it submit any additional documentation. As such, it has not demonstrated that the beneficiary qualifies to perform the duties of a specialty occupation.

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation, or that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the AAO will 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.