

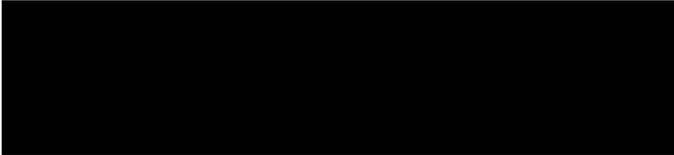


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FILE: WAC 07 141 50700 Office: CALIFORNIA SERVICE CENTER Date: **AUG 05 2008**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

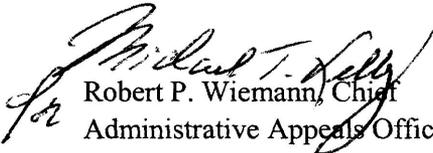
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 legal firm 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 RFE; (4) the director's denial letter; and (5) the Form I-290B, with the petitioner's statement. The AAO reviewed the record in its entirety before reaching its decision.

On the I-290B, signed by the petitioner on August 17, 2007, the petitioner asserted that the director denied the petition in error and that sufficient evidence had been submitted to demonstrate that the proffered position qualifies as a specialty occupation. The petitioner stated that the proffered position is that of a public relations specialist, not a market analyst or a market research analyst, and that the duties described in response to the RFE did not change but clarified the duties described at the time of filing.

The petitioner checked the block indicating that he would be sending a brief and/or evidence to the AAO within 30 days. The AAO sent a fax to the petitioner on June 4, 2007, informing him that no separate brief and/or evidence was received, to confirm whether or not he had sent anything else in this matter, and as a courtesy, providing him with five days to respond. However, the petitioner did not respond and no further documents have been received by the AAO to date. The record is considered complete.

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 (5<sup>th</sup> Cir. 2000).

The petitioner seeks the beneficiary's services as a public relations specialist. Evidence of the beneficiary's duties includes: the petitioner's March 20, 2007 letter in support of the petition and the petitioner's July 10, 2007 response to the director's RFE. It is noted that the petitioner's list of the described duties in his March 20, 2007 letter was taken verbatim from Department of Labor's (DOL) *O\*Net* Summary Report for Public Relations Specialists:

Prepare or edit organizational publications for internal and external including employee newsletters and stockholders' reports;

Plan and direct development and communication of informational programs to maintain favorable public and stockholder perceptions of an organization's accomplishments and agenda;

- Confer with production and support personnel to produce or coordinate production of advertisements and promotions;
- Arrange public appearances, lectures, contests, or exhibits for clients to increase product and service awareness and to promote goodwill;
- Study the objectives, promotional policies and needs of organizations to develop public relations strategies that will influence public opinion or promote ideas, products and services;

Confer with other managers to identify trends and key group interests and concerns or to provide advice on business decisions;

Consult with advertising agencies or staff to arrange promotional campaigns in all types of media for products, organizations, or individuals;

- Coach client representatives in effective communication with the public and with employees;
- Respond to requests for information from the media or designate another appropriate information source; and
- Establish and maintain cooperative relationships with representatives of consumer, employee, and public interest groups.

In the petitioner's July 10, 2007 response to the RFE, the petitioner described the proposed duties and time allocations of the proffered public relations specialist (PRS) position as follows:

1. **50% of the PRS time (20 hours per week)** will be spent on media related marketing and he will be responsible for developing and implementing marketing objectives, strategies, and programs designed to increase and improve the firm's legal services; supervise the implementation of media marketing programs, assuring their timely, effective, and efficient execution in the market place (newspaper, telephone directory, internet website, radio, TV). This job function will require in-depth research, broad knowledge of legal, media industry and administrative strategy. In addition, the PRS needs to arrange public appearances, contests or exhibits for clients to present the new service products and service awareness. Therefore, a B.A. degree in basic Public Administration, law or its equivalent is a must. The PRS must have in-depth understanding in professional writing/editing skills, interpersonal and oral presentation skills and knowledge in administration, law, internet, and media. Again, a B.A. degree is certainly required to perform these job duties.

2. **30% of the PRS time (12 hours per week)** will be spent responding to internet inquiries from the public. The PRS will establish and maintain cooperative relationships with clients, employees, and public interest groups. The PRS will respond to inquiries and requests for information from the media, websites, or other public domains. In addition, the PRS will research and investigate any new developments in laws and regulations, public interest and trends in legal service, and update the petitioner's website and literature. Furthermore, the PRS must stay on top of legal software programs used in data management and collection in order to utilize the most state-of-the-art system in the performance of his duties.
3. **20% of the PRS time (8 hours per week)** will be spent experimenting with existing advertisements for modification and improvement. "This will include communicating with clients through participating the convention, statistical data collection from clients' feedback." In addition, the PRS will be responsible for selecting an advertising firm and maintaining the firm's image in the public eye.

The director found that the proposed public relations specialist duties do not require a bachelor's degree. Citing the DOL's *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).

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. No evidence in the *Handbook*, 2008-09 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 career. The petitioner submits an excerpt from the DOL's *Occupational Outlook Quarterly* indicating that the position of public relations specialist often requires a bachelor's degree. Again, no evidence in this additional publication from the DOL indicates that a baccalaureate or higher degree in a specific specialty is required for this position. Of further note, although

information on the petition reflects that the petitioner was established in 2006, has 8 employees and a gross annual income of \$700,000.00, the petitioner's 2006 Schedule C (Form 1040) Profit and Loss from Business (Sole Proprietorship) reflects \$139,685.00 in gross receipts or sales, and no wages paid. 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)).

For the reasons discussed above, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(I).

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. Many of the advertisers, which include biotechnology, water, trade, turnpike, electronics, and shipping businesses, are not similar to the petitioner's law firm. 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. Although one of the job postings is for a media relations specialist for the New York office of a global law firm, the listing does not specify the requirement of a degree in a specific specialty. Moreover, the petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described for the global law firm, which include strategizing with practice group heads and other partners, practice development managers, and marketing staff regarding how to incorporate media relations into overall business development and marketing plans. Another job posting is for a marketing/PR coordinator of the largest law firm in the United States and the third largest in the world. Again, the advertisement does not stipulate the requirement of a bachelor's degree in a specific specialty, and the petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties of this advertised position. Thus, the advertisements are insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

The record does not include any 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 not submitted sufficient documentation to establish that the proffered position involves duties with the requisite level of complexity or uniqueness; rather the petitioner has provided a general description of the occupation without identifying any complex or unique tasks pertinent to the petitioner's business that would elevate the position to one that requires the knowledge associated with a bachelor's degree in a specific discipline. 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. The petitioner stated in his July 10, 2007 letter that the proffered position was newly created. Therefore, the evidence of record does not establish this criterion. In addition, the

AAO observes that the petitioner's desire to employ an individual with a bachelor's degree or equivalent 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 the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

On appeal, the petitioner asserts that the duties described at the time of filing and in response to the RFE demonstrate the complexity and uniqueness of the proffered position. 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. The petitioner has not established that the duties performed exceed in scope, specialization, or complexity those usually performed by public relations specialists, an occupational category that does not normally require a baccalaureate or higher degree in a specific specialty. Further, as indicated earlier in this decision, the petitioner's unsupported claims regarding the basic information of its business do not establish a requirement for the level of knowledge requisite for this criterion. 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.

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.