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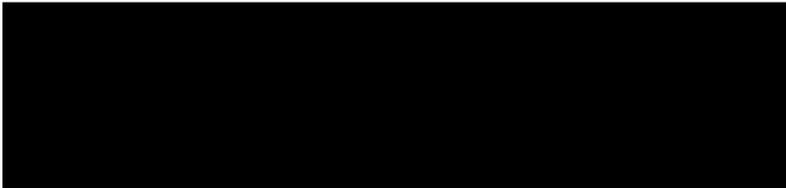
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FILE: WAC 02 149 50989 Office: CALIFORNIA SERVICE CENTER Date: FEB 21 2008

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 construction company that employed 12 personnel and had a gross annual income of \$.9 million when the petition was filed. It seeks to employ the beneficiary as a public relations representative. 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.

The record of proceeding before the AAO contains: (1) the Form I-129 filed April 1, 2002 and supporting documentation; (2) the director's August 29, 2002 request for further evidence (RFE); (3) prior counsel's September 10, 2002 response to the director's RFE; (4) the director's November 4, 2002 denial decision; (5) the Form I-290B, with counsel's brief and supporting documentation; (6) the AAO's rejection of the appeal; and (7) counsel's motion to reopen and reconsider the rejection. The AAO has reviewed its prior rejection of the appeal and will reopen this matter on its own motion. The AAO reviewed the record in its entirety before issuing this decision.

The 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. On the Form I-129, the petitioner described the proposed duties of the position as including the following:

Plans and conduct[s] [a] public relation[s] program designed to create and maintain favorable public image for employer. Purchases advertising space and time as required. Promotes goodwill through such publicity efforts as speeches, exhibits, films, tours, and question/answer sessions. Research[es] data, create[s] ideas, write[s] copy, lay[s] out work, contact[s] media. Prepare[s] press releases, compose[s] letters using computer. Supervise[s] and attend[s] to public exhibits for services.

On August 29, 2002, the director requested a more detailed description of the proposed duties of the position including the percentage of time the beneficiary would allocate to each duty. 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 September 10, 2002 response, counsel for the petitioner described the position as:

The worker should learn and know the company's operation, services, prices, terms and conditions, warranty, design, and recent up-dates, so that prospective clients could readily get accurate and latest information. This function can get 20 to 30% of work hours.

The worker is responsible in monitoring company's insurance, licenses and deadlines as per terms of the contracts. 10 to 20% of work hours.

The worker is responsible in preparing, purchases/reserve advertising spaces and time in newspapers, magazines, journals etc. 10 to 20% of work hours.

The worker is responsible to attend to clients as the company's representative to answer questions and explain/promote services and capabilities to the prospective clients. 25 to 35% of work hours.

The worker is responsible to represent the company before government agencies in getting permits and licenses and to secure up-dated rules and regulations for government/private projects being undertaken by the company. 20 to 30% of work hours.

The worker on [an] everyday basis, has to answer, respond to customer's calls or inquiries either by mail or telephone/e-mail, in-person, etc. 40 to 50% of work hours.

The worker is responsible as the company's representative to suppliers of materials, workers and sub-contractors to maintain good relationship with the company. 30 to 40% of work hours.

The worker is also responsible in giving ideas and creativeness in producing, composing and designing brochures for distribution to prospective clients or newspaper releases. 20 to 30% of work hours.

Counsel stated further that the position requires a bachelor's degree because the public relations representative has to deal with customers whose positions in their companies are as owners or managers and that this position is the public image of the company.

On December 22, 2002, the director denied the petition determining that the Department of Labor's *Occupational Outlook Handbook (Handbook)* did not report a bachelor's degree in a specific specialty as the minimum requirement for entry into the occupation. The director also determined that the petitioner 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 further determined that the petitioner had not submitted information substantiating that it normally required applicants for the position to possess a baccalaureate or higher degree in a specialized field of study. 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 repeated the description of the proffered position and amended the time spent on each of the allocated duties. Counsel asserts that the *Handbook* clearly indicates that a "Public Relations Representative is a professional and specialty occupation by its very nature, responsibility, knowledge, and education necessary to properly attend to the job duties." Counsel notes that the *Handbook* indicates that many entry-level public relations specialist positions require a college major in public relations, journalism, advertising, or communications. Counsel asserts that the proffered position requires excellent writing/editing and verbal communication skills, a strong ability to communicate business strategy, strong computer skills including, word processing and presentations, as well as strong project management skills with the ability to prioritize and manage multiple projects simultaneously.

Counsel submits copies of nine job advertisements from various companies including companies in the public relations field; companies representing large associations; and companies such as credit unions, a mutual funds

association, electronic manufacturers, an online dating service, a map information company, and a graphics company. The job advertisements list a range of degrees for the positions advertised from a general college or bachelor's degree to a bachelor's degree in journalism, communications, engineering, public relations, marketing, advertising, or business. Counsel cites *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal., 1989) for the proposition that the size of the operation bears no rational relationship to the need for a professional. Counsel submits a November 27, 2002 letter signed by the petitioner's owner stating that it is the petitioner's policy to require applicants for the public relations representative position to have a bachelor's degree. The petitioner repeats portions of the description submitted in response to the director's RFE and adds that the proffered position involves planning, researching, writing, and editing. Counsel asserts that 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.

To make its determination whether the employment above described qualifies as a specialty occupation, the AAO first turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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 *Handbook* reports the following regarding the occupation of a public relations specialist:

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. In addition, 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. When a job, like that of a public relations representative, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *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 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 AAO has reviewed the nine job announcements submitted on appeal 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)). The AAO acknowledges counsel's citation to *Young China Daily v. Chappell* regarding business size; however, it is reasonable to assume that the size of an employer's business has an impact on the duties of a particular position. Thus, the AAO reviews the specific job requirements of each proffered position in relation to the petitioner's specific business operations when assessing whether the position is parallel to similar organizations within the petitioner's industry. In this matter, it is not. Specifically, the AAO finds that the job postings submitted provide only a broad overview of the various responsibilities associated with the positions advertised. Moreover, neither counsel nor the petitioner has attempted to explain how the requirements of the disparate companies advertising for public relations positions are similar to this particular petitioner. Further, the job announcements confirm that a general degree or degrees in a wide range of disciplines are sufficient to

perform the duties of a public relations representative. The job advertisements provided are insufficient to demonstrate the proffered position is a specialty occupation as established by an industry-wide 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. 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 noting only 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 petitioner has not provided evidence 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 has not established 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 criterion 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 AAO usually 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 to assist in establishing this criterion. Although the petitioner indicates it has been in business since 1989, it has not provided any evidence that it has previously employed a public relations representative. The AAO notes the petitioner's stated policy to hire only individuals with a bachelor's degree for the proffered position; however, such a policy 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 or higher degrees. Accordingly, the AAO finds that the petitioner has not provided evidence that establishes the proffered position is a specialty occupation pursuant to 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 has provided a broad overview of the duties of the position. It is not possible to discern whether the individual in the position will be performing clerical duties, the duties of a public relations representative, or will be involved in sales.

For example, the petitioner indicated that the individual in the proffered position: would be familiar with the company's operation, services, prices, terms, conditions, warranty, design, and recent up-dates, to accurately relay such information to prospective clients; would attend to clients as the company's representative to answer

questions and explain/promote services and capabilities to the prospective clients; and would, on an every day basis, answer and respond to customer's calls or inquiries either by mail or telephone/e-mail, in-person. These duties are too general to establish that the individual would be engaged in public relations duties as opposed to the duties of a front-office receptionist or clerical employee. These duties do not reveal any complex or specialized elements. Likewise, the petitioner's indication that the individual in the proffered position would monitor the company's insurance, licenses, and deadlines and would prepare, purchase/reserve advertising space and time in newspapers, magazines, journals, are not complex or specialized duties but appear to be more clerical than related to a position that requires a four-year degree in a specific discipline. The AAO recognizes that the petitioner expects the individual in the position to represent the petitioner before government agencies to get permits and licenses and to maintain the company's good relations with suppliers, workers, and sub-contractors; but again, these broadly-stated duties do not appear to require the theoretical and practical application of a specialized body of knowledge obtained only through a four-year course of study at the university level. The individual's responsibility in the proffered position for producing, composing, and designing brochures may contain elements of the duties of a public relations specialist, but the petitioner has not described how these duties are so complex and specialized that the individual must have a four-year degree in a specific discipline. The AAO does not find anything in the description of the duties of the proffered position that elevates the position to the specialized and complex threshold of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reason. 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 not met that burden.

ORDER: The appeal is dismissed. The petition is denied.