



U.S. Citizenship
and Immigration
Services

D1



FILE: EAC 04 266 53253 Office: VERMONT SERVICE CENTER

Date: APR 20 2005

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:



Decision is decided to
even, clearly, unwarranted
invasion of personal privacy
PUBLIC COPY

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, Director
Administrative Appeals Office

DISCUSSION: The acting director of the Vermont 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 software development company, with five employees. It seeks to employ the beneficiary as a communications coordinator. The acting director denied the petition because she did not find the proffered position to meet any of the criteria required for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's and counsel's responses to the director; and (4) Form I-290B, with counsel's brief and previously submitted and new information. The AAO reviewed the record in its entirety before reaching its decision.

The AAO first turns to the director's statements regarding the petitioner's need for a communications coordinator. In her denial, the director noted the petitioner's modest revenues, stating that this level of income did not appear to reflect enough work to employ the beneficiary on a full-time basis. The record, however, establishes the petitioner as a U.S. employer that is seeking the beneficiary's services as a communications coordinator. The director's comments on this issue are, therefore, withdrawn.

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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner states it seeks the beneficiary’s services as a communications coordinator. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s September 27, 2004 letter of support; and the November 5, 2004 letter written by the petitioner in response to the director’s request for evidence. As described by the petitioner, the proffered position would require the beneficiary to perform the following duties:

- Develop external communications and materials, including the development of training and demonstration materials and oversight of the petitioner’s web site;
- Serve as a liaison between the petitioner and potential customers, institutions, investors and media;
- Represent the company in the public arena, including introducing the petitioner’s product to potential customers, media and peers;
- Review and edit press releases, technical publications and user guides, as well as all marketing communications and materials for quality and content;
- Maintain customer relations and communications with U.S. and international accounts, including initial introduction to the petitioner’s product, negotiations and post-sale account management;
- Manage and coordinate relations with resellers and sales agencies in the U.S. and abroad;
- Conduct research using a myriad of methods, including on-line, via databases, via data collected by the petitioner, through outside services and user feedback;
- Organize and manage corporate events, both in the United States and in Europe; and
- Oversee and manage vendor connections and transactions.

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)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and 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 considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (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)).

In his denial, the director concurred with the petitioner in its description of the proffered position as a communications coordinator. The AAO agrees, finding the position to fall within the occupation of public relations specialist, as described at page 270 of 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. They help an organization and its public adapt mutually to each other. However, public relations are not only about 'telling the organization's story.' Understanding the attitudes and concerns of consumers, employees, and various other groups also is a vital part of the job. To improve communication, public relations specialists establish and maintain cooperative relationships with representatives of community, consumer, employee, and public interest groups, and with representatives from print and broadcast journalism

Media specialists draft press releases and contact people in the media who might print or broadcast their material

Public affairs specialists also arrange and conduct programs to keep up contact between organization representatives and the public These media specialists represent employers at community projects... In addition, they are responsible for preparing annual reports and writing proposals for various projects

In large organizations, the key public relations executive . . . may develop overall plans and policies with other executives. In addition, public relations departments employ public

relations specialists to write, research, prepare materials, maintain contacts, and respond to inquiries.

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

To identify the educational requirements for employment as a public relations specialist, the AAO turns again to the *Handbook*, at page 271, 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

As the *Handbook* clearly indicates there is no degree requirement for the occupation of public relations specialist, the AAO concludes that the petitioner has failed to establish that its position is a specialty occupation under the first criterion.

On appeal, counsel references the above language, finding it to establish a degree requirement for public relations specialists. However, 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.

Although, in response to the director's request for evidence, the petitioner identified the proffered position as falling within the occupation of public relations specialists, counsel, on appeal, asserts that it also includes the duties of a writer/editor, noting that the *Handbook* indicates a general degree requirement for the occupation of writers and editors. While the AAO agrees that the beneficiary would be required to write and edit in performing the duties of the proffered position, it does not find that such responsibilities fall outside the occupation of public relations specialist. Instead, the writing and editing responsibilities attached to the proffered position are among the characteristics that define public relations employment, not duties attached to a different occupation. As a result, the AAO does not find counsel's assertion that the proffered position combines the occupations of public relations specialists, and writers and editors to be persuasive.

To establish the position's degree requirement, counsel also submits a letter from the executive vice president of an executive search firm who states his company is a leader in communications and marketing-related executive search. Based on his review of the duties of the proffered position, this executive finds that the communications and marketing community "would expect to hire an individual with at least a bachelor's degree in a communications related field." While the opinion expressed in the letter is relevant to the proceedings before the AAO, there is nothing in the record that independently documents the expertise or position claimed by the writer. Therefore, the opinion expressed in the letter cannot establish the proffered position as a specialty occupation. Simply going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO now turns to a consideration of whether the petitioner may qualify its position under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) -- a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. Counsel has provided five previously submitted Internet job postings from businesses seeking communications coordinators to establish that a degree is the norm within the petitioner's industry. However, the job announcements submitted by counsel do not come from organizations similar to the petitioner, i.e., a software development business. Instead, the advertisements come from a medical center, a public relations firm, a bank, an unidentified international organization and a consumer credit counseling and debt management company. Further the jobs described in the announcements, while they may have titles similar to that of the proffered position, do not appear parallel to it. None describe employment with the range of responsibilities found in the petitioner's employment. Therefore, the petitioner cannot establish its position as a specialty occupation under the criterion's first prong.

With regard to the requirements of the second prong, the AAO finds nothing in the record to establish that the position is either so complex or unique that it can be performed only by a degreed individual. 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) and (4): the employer normally requires a degree or its equivalent for the position; and 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 determine a petitioner's ability to establish that it normally requires a degree or its equivalent when filling its proffered position, as required by the third criterion, the AAO reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. Although counsel submitted a document describing a typical workweek for the communications coordinator, it does not appear that the petitioner has previously hired for the proffered position. The record contains no evidence of the petitioner's hiring practices in connection with any of its positions. 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 fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties of its position 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. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has again reviewed the duties of the proffered position, as described by the petitioner in its response to the director's request for evidence, to determine whether they reflect a higher degree of knowledge and skill than would normally be required of a public relations specialist or represent an amalgam of jobs that require different skills and qualifications. Further, the AAO has also considered counsel's statements on appeal regarding the complexity of the proffered position.

Counsel states that the writing, editing and coordination responsibilities of the proffered position, as well as those duties that would require the beneficiary to compile and analyze market research data, establish the proffered position as a specialty occupation under the fourth criterion. The AAO does not agree.

Having reviewed the duties of the proffered position, the AAO finds no evidence in the record to show that the responsibilities of the proffered position require greater knowledge or skill than that routinely needed by public relations specialists who work in demanding and complex situations to promote the goals of the businesses employing them. Further, the job, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills not normally possessed by a public relations specialist. As a result, the AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, although the AAO has withdrawn the director's conclusions regarding the petitioner's need for the proffered position, it shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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