

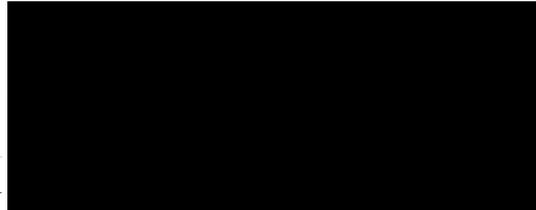
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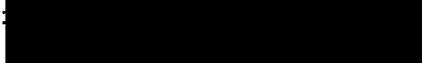
**U.S. Citizenship
and Immigration
Services**

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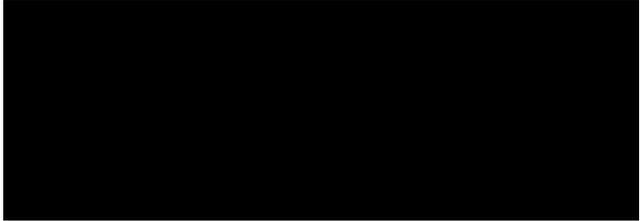
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FILE: EAC 03 098 51460 Office: CALIFORNIA SERVICE CENTER Date: **AUG 10 2005**

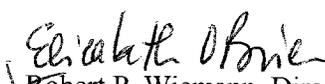
IN RE: Petitioner: 
Beneficiary: 

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, Director
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 provides telecommunications services. It seeks to employ the beneficiary as a public relations manager. 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. On appeal, counsel submits a brief and previously submitted evidence.

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.

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 proffered position.

The record of proceeding before the AAO contains: (1) 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; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a public relations manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail planning and directing public relations programs that are designed to create and maintain a favorable public image for employers and clients; engaging in fundraising, planning, and directing activities to solicit and maintain funds for special projects and organizations; developing strategies to enhance the petitioner's image and ensure customer satisfaction; determining the demand of clients and competitors and identifying potential customers; overseeing the petitioner's development and creating interest in providing services for clients. The petitioner's response to the request for evidence elaborated on the proposed duties. In the January 23, 2003 letter the petitioner stated that the position requires at least a baccalaureate degree, or its equivalent, in business administration. The petitioner's job posting stated that it requires a bachelor's degree in journalism, advertising, business administration, or a related field, and experience in telecommunications and proficiency in programs.

The director stated that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), reveals that a baccalaureate degree in a specific specialty is not required for a managerial position in public relations, advertising, marketing, promotions, and sales. The director found the information from the *Dictionary of Occupational Titles* (*DOT*) and the job posting unpersuasive, and the educational evaluation insufficient to overcome the *Handbook's* information about the educational requirements of a public relations manager. According to the director, the petitioner's public relations manager position was previously filled by an employee with an unrelated degree: a baccalaureate degree in information systems. Referencing *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000), the director stated that when determining whether a position qualifies as a specialty occupation the key factor is 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 director concluded that the petitioner failed to satisfy any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel refers to the educational evaluation, the *DOT*, and job postings to establish that the proposed position is a specialty occupation. Counsel asserts that the petitioner requires the services of a bilingual public relations manager, and submits copies of client lists and an advertising newsletter to show this. Counsel discusses two federal court decisions, and states that in one of the cases the court indicated that in determining whether a position is a specialty occupation, it is improper to rely on irrelevant factors such as a petitioner's past hiring practices.

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 first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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)).

In determining whether a 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.

On appeal, counsel claims that the petitioner requires the services of a bilingual public relations manager. But no evidence in the record supports this assertion. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *DOT*. However, 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 DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and the *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information in the *DOT*.

The *Handbook* reports the following regarding the educational and training requirements 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 public relations management positions, some employers prefer a bachelor's or master's degree in public relations or journalism. . . .

The Act defines a "specialty occupation" as one that *requires* theoretical and practical application of a body of highly specialized knowledge, and the 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. For public relations managers, the *Handbook* explains that some employers prefer, but do not require, a bachelor's or master's degree in public relations or journalism. Thus, a bachelor's degree in a specific specialty is not required for a public relations manager.

Counsel points to an educational evaluation to demonstrate that a public relations manager requires a baccalaureate degree. The educational evaluator asserts that companies seeking to employ a public relations manager require at least a baccalaureate degree in marketing/public relations. However, the petitioner's July 21, 2003 letter undermines this assertion: in the letter the petitioner relayed that the employee that previously occupied the public relations manager position held a baccalaureate degree in information systems, which is unrelated to the field of marketing and public relations.

The AAO's conclusion, from the various pieces of evidence to which it has referred, is that the proposed position, public relations manager, fails to qualify as a specialty occupation under the Act in that a baccalaureate degree *in a specific specialty* is not required for entry into the occupation. Accordingly, the petitioner cannot establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree, or its equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position.

The job postings are insufficient to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a specific degree requirement is common to the industry in parallel positions among similar organizations. Either the employers in the job postings differ in nature from the petitioner, a small telecommunications company, or their nature is not disclosed. APCO Worldwide is a public relations company, Stryker Corporation manufactures and sells surgical and medical products, Academy for Educational Development deals with social issues, Casino Careers Online is a job website, Lois Paul & Partners is a public relations agency, Quicken Loans is an online financial service company, and Pottery Barn Kids and PBteen is a retail clothing and furniture company. Because no information is provided about TAD Technical Services, John Leonard, and Switch and Data Facilities Company, the AAO cannot determine whether these companies are parallel to the petitioner. Accordingly, the job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence establishes the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the petitioner show that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for public relations managers.

To establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner must show that it normally requires a degree or its equivalent for the position. In this case, the petitioner claims that it requires a baccalaureate degree in journalism, advertising, business administration, or a related field. Since the petitioner's public relations manager position was previously held by an employee with a baccalaureate degree in information systems, which differs from the petitioner's stated educational requirements the director properly found that the petitioner did not satisfy this criterion.

The petitioner fails to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). As already discussed in this decision, according to the *Handbook* employers do not require a baccalaureate degree in a specific specialty for a public relations manager. No evidence in the record demonstrates that the proposed duties are so specialized and complex as to require the knowledge that is associated with the attainment of baccalaureate degree in a specific specialty. The petitioner, therefore, fails to satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.