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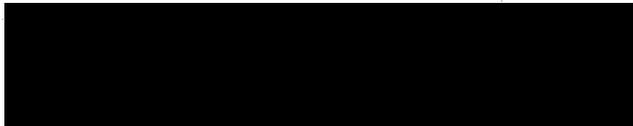


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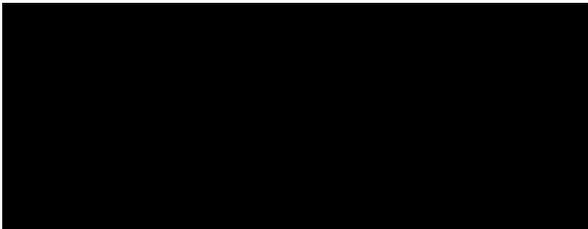
Date: JUN 09 2005

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

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 is a public relations 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. On appeal, counsel submits a brief.

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 counsel's brief and appended exhibits. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a public relations specialist. 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 implementing business strategies; coordinating public functions and special events; preparing marketing materials and maintaining client correspondence; working with clients on image or brand projection and identifying the markets, plan, and implanting strategies to launch the product and develop a working relationship with those involved in the process; translating documents into the English and Spanish languages; researching data, brands, and markets, and print and electronic media; negotiating and purchasing advertising space, and coordinating launch activities; tracking market trends; drafting and editing releases; pitching the media; securing placements and following up media outlets; monitoring the press and tracking for hits; assessing where the firm's pitching is most effective; monitoring the media's structures by reading newspapers and magazines; maintaining and updating press information; strategizing future campaigns and public relations initiatives; researching past progress and press about clients and competitors; servicing clients; drawing up nonmedia target list to create a word-of-mouth buzz about clients; and preparing a site or attending events. The petitioner's advertisement stated that the proffered position requires a bachelor's degree and at least one year of experience, strong communication skills, proficiency in Microsoft Word and PR applications, and that knowledge of French, Spanish, Portuguese, or German is desirable.

The director stated that some public relations firms require a related degree for a public relations specialist, and that the petitioner's advertisement indicates that it does not require a specific bachelor's degree; thus, the director concluded that the proposed position does not qualify as a specialty occupation. The director found that the submitted evidence about the petitioner's employees reveals that a related degree is not required for the proposed position. The director stated that a bachelor's degree in modern languages, which is the degree held by the beneficiary, does not qualify the proposed position as a specialty occupation because it only tangentially relates to public relations.

On appeal, counsel states that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) discloses that a public relations specialist is a specialty occupation, requiring a bachelor's degree; that the Public Relations Society of America (PRSA) states that a college degree and experience is excellent preparation for a public relations specialist job; that job postings and letters from other employers show that a bachelor's degree is required; that the petitioner requires its public relations specialists to hold a bachelor's degree; and that the beneficiary's degree is appropriate for the proposed position.

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 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)).

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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel's view that the *Handbook* reveals that a bachelor's degree is a base requirement for a public relations specialist is not consistent with the *Handbook's* statements. With respect to the educational requirements of a managerial position in public relations, the *Handbook* reports:

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.

The *Handbook* continues:

For public relations management positions, some employers prefer a bachelor's or master's degree in public relations or journalism. The applicant's curriculum should include courses in advertising, business administration, public affairs, public speaking, political science, and creative and technical writing.

The *Handbook* section that deals specifically with public relations specialists likewise indicates that entry-level hiring requirements for these positions do not normally include at least a bachelor's degree or its equivalent in a specific specialty. For instance, the *Handbook* 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; in fact, internships are becoming vital to obtaining employment. The ability to communicate effectively is essential. 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— information technology, health, science, engineering, sales, or finance, for example.

The *Handbook's* information shows that the proposed position fails to qualify as a specialty occupation under the Act. A "specialty occupation" is defined in the Act as an occupation 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. The *Handbook* relays that some employers *prefer* a bachelor's degree in a specific specialty for a public relations manager. The terms "prefer" and "require" are not synonymous. In the fourth edition of the *American Heritage Dictionary of the English Language*, the term "prefer" means to choose or be in the habit of choosing as more desirable or as having more value. The term "require" means to have as a requisite or need. Because the terms "prefer" and "require" are not synonymous, the proffered position fails to qualify as a specialty occupation under the Act since the *Handbook* explains that employers "prefer," but do not "require," a specific baccalaureate degree for a public relations manager. As such, the petitioner fails to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) - 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 submitted letters from public relations firms substantiate the *Handbook's* information. Tommy Hilfiger USA, Inc. indicates that its public relations specialists possess bachelor's degrees in a wide range of the fields, including international business, economics, foreign languages, art history, and English. [REDACTED] Communications also employs public relations specialists with college degrees in a variety of disciplines such as sociology, art history, psychology, marketing, and modern culture. The public relations specialists with [REDACTED] Communication hold college degrees in such diverse areas as economics, political science, computer science, languages, history, and art; and the public relations specialists with [REDACTED] Communications, Inc. hold college degrees in English, political science, and sociology. [REDACTED] candidates with college degrees in English literature, art history, and languages; [REDACTED] public relations specialists hold college degrees in communications, economics, political science, computer science, languages, history, and art. [REDACTED] Communications & Media employs persons with college degrees in art history, modern languages, and fine art. This evidence reveals that although all of the companies emphasize that candidates must possess communication skills, they are not required to possess a bachelor's degree in a specific specialty. The firms do not require a narrow range of degrees with related disciplines; for public relations specialists, they employ persons with diverse fields ranging from computer science to art. Consequently, this evidence fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, public relations specialist.

The director correctly observed that the petitioner's job advertisement indicates that the proffered position requires a bachelor's degree, but not one in a specific specialty. This supports the *Handbook's* information and the submitted evidence of letters from other employers, which indicate that employers do not require a bachelor's degree in a specific specialty for a public relations specialist position.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to job postings, information about PRSA, an article by [REDACTED] and letters from public relations firms. This evidence is not persuasive. The job postings for reference code [REDACTED] Public Relations, and [REDACTED] do not require a specific bachelor's degree [REDACTED] and [REDACTED] are dissimilar in size to the petitioner, a small public relations firm. The posting does not describe the boutique Pasadena agency; thus, the AAO cannot determine whether it is similar to the petitioner. The PRSA information indicates that a "college degree is essential and a basic grounding in the liberal arts is strongly recommended." The article by Ms. [REDACTED] discusses the need to manage communications that cross many cultures and languages. Neither document establishes that a specific college degree is required for a public relations specialist, however. We have already discussed the deficiencies with the letters from public relations firms. For these reasons, the petitioner fails to establish that a requirement for a degree in a specific specialty is common to the industry in parallel positions among similar organizations.

No evidence shows 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. The evidence of record does not distinguish the proffered position from the public relations specialty occupation, for which the *Handbook* reveals that a bachelor's degree in a specific specialty is not required.

The list of the petitioner's public relations specialists shows that they possess bachelor's degrees in diverse fields: political science, international trade and marketing, psychology, mass communications, theatre, and economics. Thus, this fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent in a specific specialty for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that 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. Once again, the *Handbook* and submitted evidence reveal that employers do not require a bachelor's degree in a specific specialty for a public relations specialist, and the evidence of record does not establish that the proffered position is more specialized or complex than the public relations occupation as described in the *Handbook*.

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.

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.