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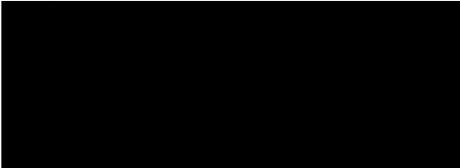
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FILE: WAC 04 025 52303 Office: CALIFORNIA SERVICE CENTER Date: NOV 15 2005

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.

[Handwritten signature of 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 an importer/exporter of salon/spa equipment 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 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 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's duties are summarized as identifying, planning, implementing, and marketing events that are designed to raise the company's profile; researching data and creating ideas; planning and conducting public relations programs designed to create and maintain a favorable public image within the United States and Asia; and preparing and distributing fact sheets, new releases, and photographs publicizing company services. The petitioner requires a baccalaureate degree, or its equivalent, in communication, marketing, or public relations.

The director determined that the proffered position parallels a public relations specialist as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The director stated that the *Handbook* reports that no defined standards exist for entry into a public relations career; and therefore the proposed position does not require a baccalaureate degree in a specific specialty. The director found the proposed duties generic in nature, providing no detail as to the uniqueness or complexity of the position. According to the director, the evidence failed to show how the proposed duties are more complex than those normally performed by a public relations specialist. The director also found the submitted job postings unpersuasive in establishing the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) since the employers accept a wide range of baccalaureate degrees for a public relations specialist.

On appeal, counsel asserts that the director misconstrues the *Handbook's* information about the educational requirements of a public relations specialist as the *Handbook's* "Significant Points" section reports that a public relations specialist requires a baccalaureate degree. Counsel states that when the *Handbook* is read as a whole it is clear that entry-level public relations specialists have a college major in a related field, and that some firms require majors that are specifically related to that firm's business. Counsel states that the DOL's use of terms "usually," "most," and "generally" in the *Handbook* implies that a baccalaureate degree is the norm, not the exception. Counsel discusses several AAO decisions, the *DOT*, the *SOC O*Net*, and the *O*Net*. Counsel narrates the proposed duties, stating they are complex in nature. According to counsel, CIS found that an advertising agency planner is a specialty occupation even though persons with different academic disciplines occupy the position. Counsel discusses the difficulty of surveying other companies; the decision in *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal., 1989); and how CIS should not rely simply on a standardized government classification system in determining whether a proposed position is a specialty occupation.

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)).

Counsel's reference to and assertions about the relevance of information from the *O*Net* and the *DOT* are not persuasive. Neither the *DOT's* specific vocational preparation (SVP) rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The proposed position parallels a public relations specialist as that occupation is defined in the *Handbook*; and the *Handbook* states the following about the qualifications of public relations specialists:

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* Job Outlook section states:

Keen competition will likely continue for entry-level public relations jobs, as the number of qualified applicants is expected to exceed the number of job openings. Many people are attracted to this profession due to the high-profile nature of the work. Opportunities should be best for college graduates who combine a degree in journalism, public relations, advertising, or another communications-related field with a public relations internship or other related work experience. Applicants without the appropriate educational background or work experience will face the toughest obstacles.

Although the *Handbook* indicates “[m]any entry-level public relations specialists have a college major in public relations, journalism, advertising, or communication,” it also reveals that “[t]here are no defined standards for entry into a public relations career.” The *Handbook* also indicates that some employers prefer degrees in a field related to the firm's business in order to perform the work of a public relations specialist. Read collectively, the above passages from the *Handbook* indicate that many entry-level public relations specialists may possess a bachelor's degree in certain fields; but employers do not require a bachelor's degree in a specific specialty for a career in public relations.

Counsel states that the DOL's use of terms “usually,” “most,” and “generally” in the *Handbook* implies that a degree is the norm, not the exception. Counsel states that an accountant, an engineer, and a lawyer are specialty occupations and that the *Handbook* states that *most* accountants require a bachelor's degree; a bachelor's degree is *usually* required for engineering; and for lawyers an applicant must *usually* obtain a college degree. The AAO points out that for public relations specialists the *Handbook* conveys that “[t]here are no defined standards for entry into a public relations career”; thus the *Handbook* indicates that a baccalaureate degree in a specific specialty is not required for a public relations career as there are many paths to enter into a public relations career.

Counsel's assertion that CIS should not rely simply on a standardized government classification system in determining whether a proposed position is a specialty occupation is not persuasive since counsel fails to cite statutory or case law in support of her assertion.

Counsel's statement that CIS has already concluded that an advertising agency planner is a specialty occupation even though persons with different academic disciplines occupy the position is not convincing. 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. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the evidence contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO's conclusion, based on the above discussion and the evidence in the record, is that the petitioner fails to 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.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to job postings. These postings are not persuasive, however. Golin/Harris International, Americhip, and Kufala Recordings do not require a specific baccalaureate degree; and Aroma Wilshire Center accepts a wide range of degrees. Although Overture Services, Inc., a provider of commercial search services, and JPL Professional require a baccalaureate degree in journalism, marketing, English, or a related field, they are dissimilar in nature to the petitioner, an importer/exporter of salon/spa equipment. For these reasons, the postings do not persuasively

establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must 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. The *Handbook* reveals, as discussed earlier in this decision, that employers do not require a bachelor's degree in a specific specialty for a career in public relations. Furthermore, no evidence reflects that the proposed duties, which involve public relations activities related to salon/spa equipment, have such complexity or uniqueness as to require a baccalaureate degree in communication, marketing, or public relations.

No evidence establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must 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. As discussed in this decision, the *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for a career in public relations. Furthermore, no evidence in the record shows that the proposed duties, which are public relations activities related to salon/spa equipment, are so specialized and complex as to require a baccalaureate degree in communication, marketing, or public relations.

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.