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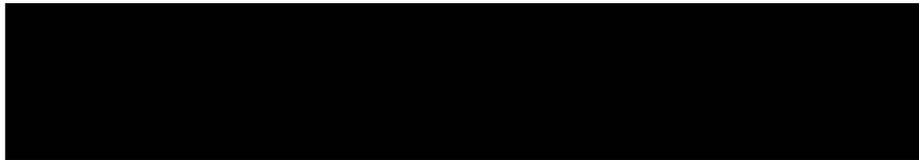
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 225 53353 Office: CALIFORNIA SERVICE CENTER Date: JAN 16 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.

A handwritten signature in black ink, appearing to read "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 staffing agency for the healthcare industry. It claims to employ 120 personnel and to have an annual gross income of \$7.7 million. It seeks to employ the beneficiary as a public relations specialist. 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 July 13, 2006 and supporting documentation; (2) the director's September 12, 2006 request for further evidence (RFE); (3) counsel for the petitioner's December 4, 2006 response to the director's RFE; (4) the director's January 30, 2007 denial letter; and (5) the Form I-290B, with supporting documentation. The AAO reviewed the record in its entirety before issuing its 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 specialist. In an attachment to the Form I-129, the petitioner provided the following list of duties for a public relations specialist:

- Prepare or edit organizational publications for internal and external audiences, including employee newsletters and stockholders' reports.
- Respond to requests for information from the media or designate another appropriate spokesperson or information source.
- Establish and maintain cooperative relationships with representatives of community, consumer, employee, and public interest groups.
- Plan and direct development and communication of informational programs to maintain favorable public and stockholder perceptions of an organization's accomplishments and agenda.
- Produce or coordinate production of advertisements and promotions.
- Arrange public appearances, lectures, contests, or exhibits for clients to increase product and service awareness and to promote goodwill.
- Confer with other managers to identify trends and key group interests and concerns or to provide advice on business decisions.
- Consult with advertising agencies or staff to arrange promotional campaigns in all types of media for products, organizations, or individuals.

In addition to repeating the above listed duties, the petitioner in its June 28, 2006 letter in support of the petition stated that it would like to hire a public relations specialist and the public relations specialist must have a bachelor's degree with a major in English or the equivalent; must have excellent writing and editorial skills; and must have at least one year of work experience in such a position.

In response to the director's September 12, 2006 request for a more detailed description of the work the beneficiary would perform for the petitioner, counsel referenced the Department of Labor's *Dictionary of Occupational Titles (DOT)* and the Specific Vocational Preparation (SVP) rating of seven for the occupation of public relations specialist. Counsel also attached an opinion prepared by Dr. Krishna P. Kandath, an Assistant Professor of Communication and Journalism at the University of New Mexico. In the November 8, 2006 opinion,

Dr. Kandath stated: "[c]ompanies seeking to employ a Public Relations Specialist require prospective candidates to possess at least a Bachelor's degree in the area of Communications, or a related field from an accredited institution of higher learning." Dr. Kandath restated his opinion by indicating that the skills, knowledge, and analytical thinking acquired through such a degree is considered the industry standard requirement. Dr. Kandath repeated the petitioner's list of duties and opined: "Skills in these areas can be acquired only through Bachelor's-level classes in these areas, experience in the field of Communications at an advanced level." Dr. Kandath indicated: "the skills required to prepare and edit organizational publications, develop information programs, maintain relationships with interest groups, develop promotional materials and consult with advertising agencies, are often taught [in] Communication courses, including Advertising, Public Relations, Mass Communication, Technical Writing, Business Writing, Communication Strategies, and other related courses." Dr. Kandath concluded: "[t]herefore, these duties require candidates for the position to possess college-level academic training in Communications, knowledge that is acquired in Communications classes offered at the Bachelor's-level." Counsel also provided several brochures/newsletters regarding its agency.

On January 30, 2007, the director denied the petition. The director referenced the Department of Labor's *Occupational Outlook Handbook (Handbook)* and noted that the list of duties provided by the petitioner corresponded most closely to the *Handbook's* discussion of public relations managers. The director noted that the *Handbook's* report on the educational requirements for public relations managers did not indicate that a baccalaureate level of education in a specific specialty is a normal, minimum requirement for entry into the occupation. The director noted that the petitioner had provided neither letters or affidavits from firms or individuals in the petitioner's industry that attest that such firms routinely employ only degreed individuals nor job announcements from organizations similar to the petitioner; nor had the petitioner submitted evidence that the proffered position involved duties that are so unique or complex that only an individual with a degree could perform them. The director found that the petitioner had not provided any evidence that it had previously required a degree or its equivalent in a specific specialty for the position. The director determined that the evidence submitted failed to distinguish the difference between the duties to be performed in the proposed position and the duties normally performed by public relations managers and that it failed to otherwise establish that the duties to be performed are so specialized and complex that the knowledge required to perform them would be associated with the attainment of a baccalaureate or higher degree in a specific specialty. The director concluded that the petitioner had failed to establish any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify the proffered position as a specialty occupation.

On appeal, counsel for the petitioner provides the same evidence as submitted in response to the director's RFE. As the director did not discuss all the evidence previously submitted, the AAO will do so on appeal.

To make its determination whether the employment described above 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.

Preliminarily, the AAO notes that *DOT* and the *Handbook* are two separate sources of information on occupations. While the AAO routinely consults the *Handbook* for educational requirements of particular occupations, it does not consider the *DOT* or its online incarnation, *O*NET*, to be a persuasive source of

information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *DOT* provides 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. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require.

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 in a specific specialty 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. Thus, the AAO concludes that the petitioner has not established that the position of a public relations specialist 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. As the director noted, the petitioner has not provided evidence in the form of letters or affidavits from other firms or individuals in the petitioner's industry substantiating that those companies or individuals normally require their public relations specialists to have a bachelor's or higher degree in a specific specialty; however the petitioner has provided the opinion of Assistant Professor Kandath in an effort to satisfy this criterion. As noted above, Dr. Kandath opines: "[c]ompanies seeking to employ a Public Relations Specialist require prospective candidates to possess at least a Bachelor's degree in the area of Communications, or a related field from an accredited institution of higher learning" and that the skills, knowledge, and analytical thinking acquired through such a degree is considered the industry standard requirement. The AAO has considered Dr. Kandath's opinion regarding the industry standard for public relations specialists; however, Dr. Kandath does not support his opinion with documentary evidence. Going on 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 Dec. 190 (Reg. Comm. 1972)). Dr. Kandath does not provide evidence of objective surveys regarding the national hiring standards of organizations similar to the petitioner; nor does Dr. Kandath provide other documentary evidence substantiating his opinion that companies seeking to hire a public relations specialist require candidates to have at least a bachelor's degree in the area of communications. The *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. Dr. Kandath's opinion in this matter is insufficient to overcome the *Handbook's* report indicating a variety of avenues are available to enter into a public relations specialists' position. When an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has not provided evidence establishing the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner can establish that the proffered position is so complex or unique that only an individual with a degree may perform the duties of the position. Upon review of the description of duties of the proffered position, the AAO does not find that the proposed duties of the position are distinguishable, by their unique nature or complexity, from a similar but non-degree-requiring position. The petitioner in this matter has provided a general overview of the occupation of a public relations specialist. The petitioner has not provided evidence of complex or unique elements of its proposed position that would establish that the position is not a

typical public relations specialist. 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. Although the petitioner indicates it has been in business since 1988, it does not provide evidence that it has previously hired an individual to perform the duties of a public relations specialist. Thus, the petitioner has not demonstrated that it normally requires an individual to possess a bachelor's degree in a specific discipline for the proffered position based on its normal hiring practices. Moreover, the AAO observes that the petitioner's desire to employ an individual with a bachelor's degree 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 degrees or higher degrees. Accordingly, the AAO finds that proffered position has not been established as a specialty occupation under the requirements at 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 them is usually associated with the attainment of a baccalaureate or higher degree. In assessing whether the petitioner has met its burden in regard to this criterion, the AAO has again reviewed the duties of the proffered position, as described by the petitioner, 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. Having reviewed the petitioner's list of duties to be performed in the proffered position, the AAO does not find any 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.

The AAO has again reviewed the opinion of Dr. Kandath regarding the proffered position. The AAO notes that Dr. Kandath repeats the petitioner's list of duties and concludes that the skills listed in these areas are only acquired through bachelor-level courses. However, the record does not reveal that Dr. Kandath interviewed the petitioner, reviewed the petitioner's daily business operations, or discovered the daily duties that the petitioner expects of the proffered position. Dr. Kandath reviewed a generic list of duties that the petitioner has not developed or otherwise described as associated with its particular proffered position. The record does not include any evidence as to how the described list of duties directly relates to the petitioner's business operations. The AAO does not find that Dr. Kandath has provided an adequate factual foundation to support his opinion. The opinion submitted does not provide any substantiating evidence that the duties of a public relations specialist involved in the petitioner's business are duties that include complex and specialized elements requiring knowledge usually associated with at least a bachelor's degree in a specific specialty. Further, the other evidence of record

does not demonstrate that the duties of the proffered position are more specialized and complex than duties within the normal range of a public relations manager's duties, a position for which the *Handbook* does not indicate a usual association with at least a bachelor's degree in a specific specialty. The AAO concludes that the petitioner has failed to establish that its proffered position meets 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.