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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529

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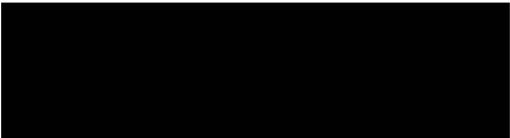


FILE: EAC 07 230 52320 Office: VERMONT SERVICE CENTER Date: OCT 08 2009

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)

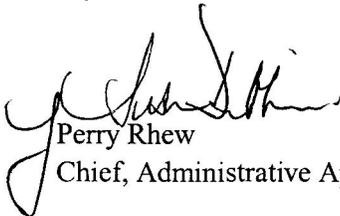
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, 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.

On the Form I-129, the petitioner stated that it is a marketing and product development consulting firm, that it was established in 1998, that it employs three persons plus subcontractors, and that its gross annual income is \$705,235 and its net annual income is \$328,968. It seeks to employ the beneficiary as a public relations account executive. Accordingly, the petitioner 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).

On April 25, 2008, the director denied the petition, determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that the proffered position is a specialty occupation and that United States Citizenship and Immigration Services (USCIS) did not address all the evidence submitted and erroneously interpreted some of the evidence submitted.

The record includes: (1) the Form I-129, Petition for a Nonimmigrant Worker and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel for the petitioner's response to the director's RFE and documentation; (4) the director's denial decision; and, (5) the Form I-290B and counsel's statement in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] 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 [2] 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

On the Form I-129, the petitioner stated that the proffered position is that of a “public relations account executive” and in a position description appended to the petition described the responsibilities of the position as:

- Study and Evaluate Customer’s promotional objectives and organizational needs.
- Manage, develop and coordinate customer retention programs and strategies.
- Evaluate and identify social trends and concerns so that they may be addressed through the publicity campaign.
- Manage, Develop and Implement customer retention programs.
- Coordinate and prepare presentations to consumers of new and different methods of printing, printing materials, POP materials and/or other specialties which may better serve the company’s promotional goals and public perception of the company according to goals.
- Coordinate customer final product delivery.
- Plan and coordinate strategies for the exposition of the company in the community or media like participation in the event in Puerto Rico and the continental USA.
- Implement marketing and promotional strategies, sales techniques and products knowledge.
- Assist clients in deciding over art and other technical specification, following through up [sic] with the process to assure compliance with client’s request.
- Serve as liaison between the clients and the advertising companies and printing companies.
- Prepare statistic tables of sales relations between costs, sales, and expenses.
- Weekly and monthly updates reporting status to each company.
- Maintain client database information for the purpose of direct marketing and ongoing account management.

In a March 10, 2008 response to the director’s RFE, counsel for the petitioner re-stated the above duties and added the percentage of time the beneficiary would apply to the various duties. Counsel also referenced the Department of Labor’s *Online ONET (O*NET)* regarding public relations specialists and noted that *O*NET* indicated that “most of these occupations require a four-year degree.” Counsel also provided five letters from individuals at other businesses indicating that it is an industry-wide standard to hire employees with a minimum of a bachelor’s degree in marketing, media market or advertisement to occupy positions in the public relations sector. Counsel also noted that the petitioner’s owner and director possessed a degree in commerce and over 25 years of experience and that the petitioner’s second employee held a bachelor’s degree in industrial psychology. Counsel also submitted a **March 7, 2008 position evaluation prepared by [REDACTED]** at Buffalo.

On April 25, 2008, the director denied the petition. The director determined that the *O*NET* did not establish the proffered position as a specialty occupation and that the Department of Labor’s *Occupational Outlook Handbook (Handbook)* did not report that a bachelor’s degree in a specific discipline was required for the occupation of a public relations specialist. The director concluded

that the evidence submitted did not clearly establish that the proffered position is so specialized and complex that the attainment of a baccalaureate degree in a specific specialty would be required.

On appeal, counsel for the petitioner asserts that the director did not analyze all the evidence submitted and misinterpreted the *O*NET* report regarding the occupation of a public relations specialist.

The AAO observes that the director referenced the letters submitted from other businesses regarding an industry-wide standard for the occupation of public relations specialist but did not offer an analysis regarding the failure of the letters to establish the proffered position as a specialty occupation. The AAO also finds that the director could have better articulated the reason USCIS does not consider *O*NET* reports when determining whether a position is a specialty occupation. The AAO also notes that the director did not offer an analysis of the position evaluation prepared by Dr. Tiras. The AAO has reviewed the evidence in the record and upon a *de novo* review, the AAO does not find the evidence of record persuasive in establishing the proffered position as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations as one method to determine whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The *Handbook* reports that the occupation of “public relations specialist” may be described as follows:

Public relations specialists handle organizational functions such as media, community, consumer, industry, and governmental relations; political campaigns; interest-group representation; conflict mediation; and employee and investor relations. They do more than “tell the organization’s story.” They must understand the attitudes and concerns of community, consumer, employee, and public interest groups and establish and maintain cooperative relationships with them and with representatives from print and broadcast journalism.

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. Sometimes the subject is an organization and its policies toward its employees or its role in the community. Often the subject is a public issue, such as health, energy, or the environment, and what an organization does to advance that issue.

Public relations specialists also arrange and conduct programs to keep up contact between organization representatives and the public. For example, they set up speaking engagements and often prepare speeches for company officials. These media specialists represent employers at community projects; make film, slide, or other visual presentations at meetings and school assemblies; and plan conventions.

In addition, they are responsible for preparing annual reports and writing proposals for various projects.

Upon review of the petitioner's description of the proffered position, the AAO finds that although the *Handbook* lists a more expansive range of duties than that of the proffered position, the proffered position corresponds generally with the *Handbook's* statements regarding the occupation of a public relations specialist for a small company. Regarding the educational requirements for a public relations specialist, the *Handbook* reports: "[t]here are no defined standards for entry into a public relations career." Although the *Handbook* also recognizes that "[a] college degree in a communications-related field combined with public relations experience is excellent preparation for public relations work," the *Handbook* also reports:

Many entry-level public relations specialists have a college degree 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 care, science, engineering, sales, or finance, for example.

Thus, the *Handbook* recognizes that a diverse group of degrees or varied experience may satisfy employer requirements for entry into a public relations specialist position, confirming that there are no defined standards for entry into such a position. The director in this matter correctly interpreted the *Handbook's* report regarding educational requirements for a public relations specialist's position. The *Handbook's* indication that a variety of degrees may be advantageous for the position but also noting the lack of defined standards for entry into the position precludes a conclusion that the position would categorically qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) as read in the context of the statutory and regulatory definitions of specialty occupation. It is incumbent on the petitioner to establish that its particular position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties. This, the petitioner has failed to do.

The AAO has also reviewed the excerpt from the *O*NET* regarding the position of public relations specialist. As noted above, the petitioner's description of job duties seems to generally correspond to the duties of a public relations specialist. However, the AAO has long found that neither the *DOT* nor its successor the *O*NET* are persuasive sources of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. 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. An SVP or JobZone 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 AAO observes that the petitioner's excerpt from the *O*NET* reports that most of these occupations (including account executive, marketing director, public relations account executive, account supervisor,

communications manager, corporate communications director, information and communications specialist, public affairs officer, public information officer, media outreach coordinator) require a four-year bachelor's degree, but some do not. Such a wide ranging list of possible job titles and necessarily corresponding diverse job duties, and possible educational requirements, along with the failure to include any information regarding a degree in a specific discipline, does not assist in identifying the particular proffered position as a position that requires a bachelor's degree or its equivalent in a specific specialty.

The AAO has reviewed the position evaluation prepared by [REDACTED]. [REDACTED] opines that organizations like the petitioner require prospective candidates to possess at least a bachelor's degree or its equivalent in marketing, advertising, business administration, or a related field and that this is an industry-wide standard. [REDACTED] opines: "a Bachelor's degree provides the necessary skills and abilities such as decision-making, technical problem-solving, and analytical-thinking crucial to a position such as public relation account executive." [REDACTED] further opines: "[i]mplementing marketing and promotional strategies, sales techniques, and product knowledge and assisting clients in deciding over art and other technical specification, following through with the process to assure compliance with clients' requests, can only be accomplished by an individual with academic training and expertise in Marketing, Advertising, Business Administration, or related fields." [REDACTED] concludes that a bachelor's degree in marketing, advertising, business administration or a related field is a standard requirement for such a multifaceted position.

The AAO acknowledges [REDACTED] opinion but does not find that the position evaluation includes an analysis of the actual job duties, rather than a listing of the job duties. [REDACTED] does not provide a sufficient explanation of the underlying reasons he finds a particular course of study as required to perform the job duties. Moreover, it appears that [REDACTED] is of the opinion that a range of degrees would qualify an individual to perform the duties of the position. The AAO reiterates that a bachelor's degree in general studies or in an unrelated field is insufficient to establish that a particular position is a specialty occupation. The position evaluation submitted is insufficient to establish that the proffered position requires the attainment of a bachelor's or higher degree in a specific discipline as a minimum for entry into the occupation.

In this matter, the record does not establish that the duties of the position require the 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. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to consider 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. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

A review of the evidence of record finds it insufficient to establish the proposed duties comprise a position that is identifiable with an industry-wide educational standard, or is distinguishable, by its unique nature or complexity, from a similar but non-degree-requiring position. The AAO again acknowledges [REDACTED] letter but does not find that [REDACTED] opinion is sufficient to establish that there is an industry-wide standard for public relations account executives for organizations similar to the petitioner. [REDACTED] does not reference surveys or established publications to substantiate that the employment of individuals with the general duties described for the proffered position require a bachelor’s or higher degree in a specific discipline. The AAO may, in its discretion, use advisory opinion statements submitted as expert testimony. However, where 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 AAO has also reviewed the five letters submitted by individuals at other businesses indicating that there is an industry-wide standard of hiring employees with a minimum of a bachelor’s degree in marketing, media market or advertisement to occupy positions in the public relations sector. The letters submitted are from: (1) a sales and marketing manager at Advanced Graphic Printing, a commercial printer in Puerto Rico; (2) the president and owner of Gilerto Geigel Promotional Advertising & Digital Printing; (3) the managing editor of a newspaper in Puerto Rico; (4) the president and owner of Impression Associates, Inc.; and (5) the office manager at Wing Latino. Each letter includes the same text asserting that it has “become an industry standard to hire marketing and advertisement professionals with a minimum education equivalent to a bachelor’s degree which can be in advertisement, marketing, and/or media marketing” and “all employees to be hired to occupy positions as account executives are required the minimum education of a bachelor’s degree.”

The letters and the website information submitted for four of the five companies do not include sufficient information regarding the size of the companies in terms of the nature of the business, the number of employees, or the level of revenue. Although the letter-writers state that they have experience within the “industry of marketing, advertising, and media market,” the letter-writers do not expound upon their experience. Neither do the letter-writers provide supporting evidence of their experience in a particular industry. The letter-writers do not provide examples of the employees hired at their respective companies in public relations account executive positions and the educational level of those employees. Going on the 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 190 (Reg. Comm. 1972)). Submitting boilerplate letters without evidence of the letter-writer’s actual experience and authority to speak to industry standards diminishes the probative value of those letters. The AAO is unable to discern from the letters and the general information regarding their respective companies that the letter-writers have the experience to speak to the hiring practices in a particular industry for a particular position.

The petitioner has not provided evidence for the record that demonstrates that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner in this matter has also failed to establish the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires that the proffered position be of such complexity or uniqueness that it can be distinguished from other marketing/sales positions within the same industry. The record does not contain evidence detailing what duties of a public relations account executive require the attainment of a baccalaureate or higher degree in a specific discipline. The record lacks evidence or analysis establishing that particular duties of the proffered position differ from the routine duties of a skilled public relations account executive. As the described duties are generic and routine, the AAO does not find that the evidence of record establishes that the specific duties of the proposed position are more specialized and unique than those of a typical public relations account executive or are so complex or unique that they can be performed only by an individual with a degree in a specific discipline. **The petitioner has not provided evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).**

The record also fails to demonstrate that the petitioner has a history of recruiting and hiring degreed candidates for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The petitioner states that it has been in the business since 1998 and has three employees. The petitioner noted that its owner has a degree in accounting and provided a resume detailing her experience and that a second employee had a degree in industrial psychology and was employed at the petitioner in the position of human resource generalist. The record, however, does not include documentary evidence substantiating that other individuals who are employed or had been employed in a similar position to the proffered position had a bachelor's degree in a specific discipline relating to the position. Again, 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. at 165. The record does not include any information regarding the petitioner's past educational requirements for individuals, if any, in the proffered position. The AAO also observes that a petitioner's self-imposed employment requirements may not always establish that a position is a specialty occupation, as self-imposed employment requirements without additional information would allow any alien with a bachelor's degree to 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 or higher degrees. The record in this matter is insufficient to establish that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline and, therefore, establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The duties of the proffered position show that the tasks relate primarily to the

routine duties of a public relations account executive. Although the petitioner asserts that the duties of the position are the duties of a specialty occupation, the petitioner has not explained what particular duties of the proffered position comprise tasks that require the application of specialized or complex knowledge associated with the attainment of a baccalaureate degree or higher degree in a specific discipline. The petitioner has not adequately explained how the duties of the proffered position differ from those of a generalist position in this same field. The petitioner has not substantiated that the nature of its business requires a public relations account executive who must perform duties that are specialized and complex such that the position should be designated a specialty occupation. Although the position may require skill, the petitioner has not established that that skill may be attained only through the specialized coursework attendant to a four-year university level education in a specific discipline. The AAO has again reviewed the opinion letter of [REDACTED] and reiterates that [REDACTED] does not provide an adequate analysis of the job duties and detail why those duties require specialized or complex knowledge associated with the attainment of a bachelor's degree in a specific discipline. The AAO notes that the record does not include the nature of the evidence [REDACTED] reviewed regarding the petitioner's business or the specific daily tasks of the proffered position, as opposed to the general description provided. The record does not include sufficient evidence to demonstrate that the petitioner established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

The petition will be denied and the appeal dismissed for the above stated reason. 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.