



U.S. Citizenship
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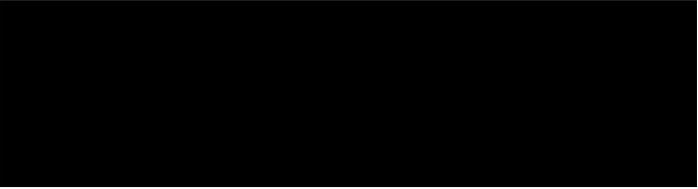


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 06 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a business that provides diver training and education, diving equipment, and travel services. It seeks to hire the beneficiary as a marketing and public relations communications specialist. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and additional evidence. The AAO reviewed the record in its entirety before reaching 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, a 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor 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.

The petitioner states that it is seeking the beneficiary's services as a marketing and public relations communications specialist. Evidence of the beneficiary's duties includes: the Form I-129; a September 30, 2003 letter of support from the petitioner; and the petitioner's January 2, 2004 response to the director's request for evidence.

At the time of filing, the petitioner stated that the primary responsibilities of its position were to "research market conditions in the local, regional and national areas to determine potential growth of [its] business and services and to promote or create good will for individuals, groups, or associations by selecting favorable publicity and releasing it through various communications." Sixty percent of the beneficiary's time was to be spent on research and analysis activities, and 40 percent on implementation and monitoring activities. However, in response to the director's request for evidence, the petitioner referred to its proffered position as a public relations specialist and primarily emphasized the beneficiary's responsibility for "promoting or creating goodwill for individuals, groups, or organizations by writing or selecting favorable publicity material and releasing it through various communications media in the promotion of the products offered by [the petitioner]." Fifty percent of the beneficiary's time was to be spent on planning initiatives, 20 percent on implementation and 30 percent on monitoring activities.

Despite this shift in the petitioner's general presentation of its position, the AAO's finds the specific duties to be performed by the beneficiary to have been consistently described, at the time of filing and in response to the director's request for evidence. Accordingly, the proffered position -- which the petitioner states is to provide high-quality and detailed research, while actively building relationships with customers and focusing on increasing knowledge of industry issues -- is one that combines the following marketing and public relations duties:

- Analyze problems and opportunities, defining goals, determining the public to be reached, and recommending and planning activities;
- Write and edit materials such as press releases, product information, and employee newsletters; distribute brochures, news releases and promotions; and devise and direct various initiatives aimed at generating positive recall for the petitioner's clients, including sales brochures, leaflets, flyers, and posters;
- Independently direct the development of public relations strategies and programs and maintain alignment with the petitioner's marketing plan; and oversee public relations

activities, arranging for public relations efforts in order to meet the needs, objectives, and policies of individuals, special interest groups and business concerns, and creating strategies that target specific groups on the Pacific and East coasts, taking into consideration demographic criteria;

- Manage, design and conduct marketing research to develop the petitioner's business strategies (including pricing strategies), assuming responsibility for problem definition, the collection and analysis of primary/secondary research, the selection of the research design for primary data collection, development of collection methods for quantitative and qualitative information, including sampling plans;
- Process and analyze the collected data, including the significance, reliability and validity of the results; and communicate the findings to management;
- Monitor trends within the outdoor sports market and identify the need for new products and services;
- Manage public relations budget and disbursements to support information collection and to maintain a database of information on competitive intelligence to be used to assist the petitioner in gaining market share;
- Develop a comprehensive marketing plan to include "above and below the line of communications, event marketing and cooperative marketing efforts with customers;"
- Create localized public relations strategies -- press briefings, product/service mass demonstrations, and trade presentations -- to leverage national public relations programs;
- Prepare cost/benefit analyses on all programs, measuring the results of communications efforts and providing a feedback mechanism to quantify the success or failure of an activity related to consumer behavior;
- Manage crisis situations, crafting responses and disseminating information; and
- Monitor the number of exposures, awareness/comprehension/attitude changes, and sales and profit contribution.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (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)).

In his denial, the director, found that not all the duties of the proffered position were those of a specialty occupation and, therefore, concluded that the employment offered by the petitioner could be performed by an experienced individual whose educational training fell short of a baccalaureate degree. The AAO does not agree with this analysis. Not all of the duties of a proffered position must fall within a specialty occupation for that position to impose a degree requirement. Instead, a proffered position may be found to be a specialty

occupation when the performance of any of its duties legitimately requires the beneficiary to have a baccalaureate or higher degree or its equivalent

In light of the petitioner's assertions that its position combines the occupations of a market research analyst and a public relations specialist, the AAO has reviewed the discussion of both these occupations in the 2004-2005 edition of the *DOL Handbook*. The *Handbook*, at page 173, describes the employment of market and survey researchers as follows:

Market, or marketing, research analysts are concerned with the potential sales of a product or service. They analyze statistical data on past sales to predict future sales. They gather data on competitors and analyze prices, sales, and methods of marketing and distribution. Market research analysts devise methods and procedures for obtaining the data they need

After compiling the data, market research analysts evaluate them and make recommendations to their client or employer based upon their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information may also be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations. Market research analysts might also develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways

Because of the applicability of market research to many industries, market research analysts are employed in most industries

As described by the petitioner, the duties of the proffered position require the beneficiary not only to analyze marketing information for the petitioner but first to design and implement the methods to be used to collect that information. These responsibilities are closely aligned to those identified by the *Handbook* as characterizing the occupation of marketing research analyst. As a result, while they do not constitute all of the petitioner's employment, these responsibilities, nevertheless, establish that the beneficiary would be required, in part, to perform the duties of a marketing research analyst.

The petitioner has identified the remaining duties of the proffered position as those of a public relations specialist. The AAO, therefore, turns to the *Handbook* for its description of the occupation of public relations specialists, as discussed at page 270:

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. They help an organization and its public adapt mutually to each other. However, public relations are not only about 'telling the organization's story.' Understanding the attitudes and concerns of consumers, employees, and various other groups also is a vital part of the job. To improve communication, public relations specialists establish and maintain cooperative relationships

with representatives of community, consumer, employee, and public interest groups, and with representatives from print and broadcast journalism

Media specialists draft press releases and contact people in the media who might print or broadcast their material.... Public affairs specialists also arrange and conduct programs to keep up contact between organization representatives and the public These media specialists represent employers at community projects In addition, they are responsible for preparing annual reports and writing proposals for various projects

In large organizations, the key public relations executive . . . may develop overall plans and policies with other executives. In addition, public relations departments employ public relations specialists to write, research, prepare materials, maintain contacts, and respond to inquiries.

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 materials for distribution. They also may handle advertising or sales promotion work to support marketing.

While the *Handbook*, at page 173, indicates that a number of the public relations-related duties of the proffered position are also performed by market researchers, others are normally the work of public relations specialists. The management of the petitioner's public relations strategy, the oversight of press briefings and trade presentations, and general responsibility for the drafting and editing of all of the petitioner's informational materials fall within the work of public relations specialists. Accordingly, the AAO concludes that the petitioner has accurately characterized the position as combining the occupations of market research analyst and public relations specialist.

As noted by the director in his denial, the *Handbook* indicates no degree requirement for those individuals seeking employment as public relations specialists. However, its discussion of market and survey researchers, at page 174, states:

A master's degree is the minimum requirement for many private sector market and survey research jobs, and for advancement to many more responsible positions. Market and survey researchers may earn advanced degrees in business administration, marketing, statistics, communications, or some closely related discipline

Bachelor's degree holders who majored in marketing and related fields may qualify for many entry-level positions that might or might not be related to market and survey research. These positions include research assistant, administrative or management trainee, marketing interviewer, and salesperson, among others

In addition to being required for most market and survey research jobs in business and industry, a master's degree is usually the minimum requirement for a job as an instructor in junior and community colleges

In light of the above discussion regarding the advanced degree requirement normally imposed on those seeking employment as market research analysts, the AAO finds the petitioner to have established that its position -- based on those duties requiring the beneficiary to perform as market research analyst -- requires the beneficiary to hold the minimum of a baccalaureate or higher degree in a related field, or its equivalent and, therefore, to meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Therefore, the petitioner has established its proffered position as a specialty occupation. The director's decision will be withdrawn and the case remanded to the director for a decision as to whether the beneficiary qualifies to perform the duties of a specialty occupation. The director shall then issue a new decision based on the evidence of record, as it relates to the statutory and regulatory requirements for H-1B nonimmigrant visa eligibility.

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 director's decision of January 22, 2004 is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.