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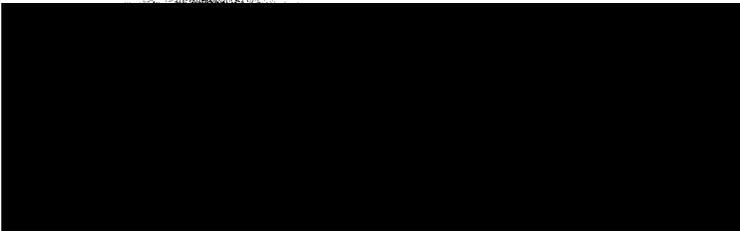
FILE: WAC 02 133 51562 Office: CALIFORNIA SERVICE CENTER Date:

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, 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 licensed adult care home that seeks to employ the beneficiary as a public relations/journalist 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 and previously submitted evidence.

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/journalist specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company 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 analyzing market conditions; devising a public relations program designed to create and maintain a favorable public image and publicize services; collecting data; researching, drafting and editing fact sheets, news articles, editorials, newspaper columns, and advertisements for submission to newspapers; creating, writing, and editing brochures, newsletters, and other advertising material to publicize the petitioner's business. The petitioner stated that the beneficiary was qualified for the proffered position based on her educational background: a bachelor's degree with a major in English.

The director determined that the proffered position was not a specialty occupation. According to the director, the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) indicated that public relations specialists do not require a bachelor's degree in a specific specialty. The director found the submitted job postings unpersuasive because they differed in nature from the petitioner, an adult care facility with six employees. The director stated that the proposed duties and stated level of responsibility did not indicate complexity or authority beyond what is normally encountered in the occupational field. Finally, the director stated that the submitted evidence did not indicate that the petitioner normally requires applicants to possess a bachelor's or higher degree in the field.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel contends that the director misinterpreted the *Handbook*; it did not indicate that a bachelor's degree in a specialized field of study is not normally a minimum requirement of the industry for entry into the public relations field. Counsel claims that a bachelor's degree is required for entry into a public relations specialist position, and refers to the *Occupational Information Network (O\*Net)* and *Handbook* to support this claim. Counsel asserts that the director erroneously stated that the companies in the submitted job postings must be similar in nature, size, and type of operation to the petitioning entity, and cites to the court decision in *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) to assert that the court held that the size of an operation bears no rational relationship to the need for a professional, and that the focus must be on the nature of the duties to be performed. According to counsel, the proffered position is newly created.

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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

Counsel asserts that the proffered position is a specialty occupation because of information contained in the *O\*Net*. This assertion is not persuasive. The DOL has replaced the *Dictionary of Occupational Titles (DOT)* with the *O\*Net*. Both the *DOT* and *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. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information contained in the *O\*Net*.

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 notes that counsel's job description of the proffered position in the September 16, 2002 letter submitted in response to the request for evidence varies significantly in some respects from the petitioner's March 1, 2002 letter. For instance, counsel stated that duties include "formulating marketing programs" and "devising surveys for the public to complete for the purpose of compiling market research data." The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Accordingly, the duties in the job description in the September 16, 2002 letter that vary materially from the March 1, 2002 letter will not be considered on appeal.

As already stated, the AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The duties of the proffered position are performed by a public relations specialist. The *Handbook* describes a public relations specialist, such as a media specialist, as drafting press releases and contacting people in the media who might print or broadcast their material. Further, the *Handbook* states:

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.

Counsel claims that the *Handbook* reveals that a bachelor's degree in a specific specialty is required for entry into a position as a public relations specialist. The AAO does not agree with counsel's claim. As stated by the director, the *Handbook* reports:

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.

Although the *Handbook* states “[m]any entry-level public relations specialists have a college major in public relations, journalism, advertising, or communication,” it also reveals “[t]here are no defined standards for entry into a public relations career.” Read in totality, the quoted passage in the *Handbook* indicates that many entry-level public relations specialists may possess a bachelor's degree in certain fields; however, employers do not *require* candidates to possess a bachelor's degree in a specific specialty for a career in public relations. Accordingly, the petitioner cannot 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/journalist specialist.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel turns to job postings. Counsel asserts that the director erroneously stated that the companies in the job postings must be similar in nature, size, and type of operation to the petitioning entity, and cites to the court decision in *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) to assert that the court held that the size of an operation bears no rational relationship to the need for a professional, and that the focus must be on the nature of the duties to be performed.

The director properly found the job postings unpersuasive in establishing the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel refers to *Young China Daily* to assert that the size of the petitioner bears no rational relationship to the need for a public relations specialist. However, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) plainly indicates that the specific degree requirement must be common to the industry in parallel positions among similar organizations. Thus, the director correctly determined that the organizations in the postings must be similar to the petitioner, an adult care facility with six employees. The AAO finds that either the nature of the companies in the postings is not disclosed or the companies are dissimilar from the petitioner. An insurance company in central Connecticut; Aether Systems, Inc., a wireless communications company; American Optometric Association; Worldwinner.com, an Internet company; Starr

Commonwealth, a child and family non-profit organization; and Carlson Wagonlit Travel, a travel industry company. The nature of Boehringer Ingelheim, Convergys, and Deltek Systems, is not disclosed in the posting. The AAO notes that Deltek does not require a specific bachelor's degree, and that Carlson Wagonlit Travel and Convergys prefer, but do not require, a bachelor's degree in a specific specialty. For the stated reasons, the job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for public relations specialists.

Because the position is newly created, the petitioner cannot establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that it normally requires a degree or its equivalent for the position.

The petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which 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. As already discussed, the *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for public relations specialists.

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.