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U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 03 261 55336 Office: CALIFORNIA SERVICE CENTER Date: JUN 09 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 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 jewelry manufacturing company 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 with counsel's addendum, and counsel's brief on appeal. 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 would perform duties that entail conducting comparative marketing studies, analyzing marketing conditions, and devising a public relations program to enhance and develop a positive image of the company; using multimedia programs to influence the way the public views the company; conducting advertising campaigns, developing a public relations program, and evaluating new sources of clients in order to reach targeted markets and meet the company's objectives and goals; creating, writing, and editing the company's advertising materials, and writing press releases and advertising copies; supervising the preparation and distribution of fact sheets and news releases to potential clients to publicize business activities; and writing reports about clients' opinions so that the company may correspond to changing public trends and demands. The petitioner stated that the beneficiary qualifies for the position based on her bachelor of arts degree in mass communication.

The director stated that although the proposed duties are those of a specialty occupation, he was not convinced that the beneficiary will actually perform a public relations specialist position and that the petitioner requires the full-time services of a public relations specialist. The director found that the proposed position is that of a public relations specialist as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that, although baccalaureate-level training is preferred for this occupation, it is not a normal industry-wide minimum requirement. The director found the submitted evidence did not establish that: (1) the petitioner normally requires a bachelor's or higher degree; (2) the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree; and (3) the petitioner's degree requirement is common in the industry in parallel positions among similar organizations. The director found the job postings and the petitioner's letter, which states that the industry standard is to require a bachelor's degree, unpersuasive in establishing a degree requirement for a public relations specialist. The director stated that as an organization with a low level of complexity, the petitioner has not shown a realistic need for the services of a full-time public relations specialist for three years.

On appeal, counsel states that a public relations specialist is a specialty occupation, and that the director acknowledges that the proposed position is a specialty occupation. Counsel asserts that the director does not explain why he determined that the beneficiary will not perform the proposed position, and counsel states that no evidence undermines the petitioner's credibility. Counsel states that the director does not identify any authority for his "business complexity" standard, and did not offer any guidance in the request for evidence for satisfying this standard. Counsel refers to the court's decision in *Young China Daily vs. Chappell*, 742 F. Supp. 552 (ND Cal. 1989) to state that a company's size or newness is not a determining factor in deciding whether a job qualifies as a specialty occupation. Counsel emphasizes that the petitioner's annual revenue is nearly \$13 million. Referring to the *Handbook*, counsel states that it shows that a bachelor's degree is a base requirement for a public relations specialist. Counsel asserts that the job postings establish that regardless of

the type of employer, whether jewelry manufacturer or audio/visual dealer, and geographical location of the company, a public relations specialist performs the same duties. Counsel states that the director fails to meaningfully address the proposed position's duties.

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 record contains information from the *Dictionary of Occupational Titles (DOT)*. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. 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 Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. The *O*Net* 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. 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 an occupation and advance within that occupation. For this reason, the *DOT* and *O*Net* evidence is not persuasive in establishing that the proposed position qualifies as a specialty occupation.

The AAO next considers 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; 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 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)).

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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel's statement that the *Handbook* reveals that a bachelor's degree is a base requirement for a public relations specialist is not persuasive in establishing that the proposed position satisfies the first criterion at

C.F.R. § 214.2(h)(4)(iii)(A). With respect to the educational requirements of a managerial position in public relations, the *Handbook* reports:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

The *Handbook* continues:

For public relations management positions, some employers prefer a bachelor's or master's degree in public relations or journalism. The applicant's curriculum should include courses in advertising, business administration, public affairs, public speaking, political science, and creative and technical writing.

The *Handbook* section that deals specifically with public relations specialists likewise indicates that entry-level hiring requirements for these positions do not normally include at least a bachelor's degree or its equivalent in a specific specialty. For instance, the *Handbook* 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; 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* information shows that the proposed position fails to qualify as a specialty occupation under the Act. A "specialty occupation" is defined in the Act as an occupation that *requires* 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 in the United States. The *Handbook* relays that some employers *prefer* a bachelor's degree in a specific specialty for a public relations manager. The terms "prefer" and "require" are not synonymous. In the *American Heritage Dictionary of the English Language* the term "prefer" means to select in preference to another or others; value more highly; or like better. The term "require" means to have use for as a necessity or need. Because the terms "prefer" and "require" are not synonymous, the proffered position fails to qualify as a specialty occupation under the Act since the *Handbook* explains that employers "prefer," but do not "require," a specific baccalaureate degree for a public relations manager.

Counsel's December 22, 2003 letter states that California's Employment Development Department reports that employers prefer specific bachelor's degrees for a public relations specialist. As already discussed in this decision, an employer's preference is not enough to meet the definition of a specialty occupation under the Act.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the record contains job postings. For various reasons, this evidence is unpersuasive. The Long & Foster Real Estate, Inc. and Troxell Communications postings state that a bachelor's degree is required for a public relations specialist, though they do not indicate that it must be in a specific specialty. The postings from jgondek@cmilc.com, Robert Half International, and Passion Parties, Inc., Mervyn's, and ParaSoft Corporation require a narrow range of bachelor's degrees that relate to public relations; however, either these companies differ in size, nature, and/or scope from the petitioner, a jewelry manufacturer with 18 employees, or they are not described in the posting. Robert Half International has over 325 offices; Mervyn's is a department store chain; the company that jgondek@cmilc.com represents is not described, and ParaSoft Corporation and Passion Parties, Inc. are also not described. For these reasons, the petitioner fails to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence shows 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. As described in the record, the proffered position is neither more complex than or unique from the public relations specialist occupation for which the *Handbook* reveals that a bachelor's degree in a specific specialty is not required.

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

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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. Once again, the *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for a public relations specialist, and the evidence of record does not establish that the proffered position is more specialized or complex than the public relations occupation as described in the *Handbook*.

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.

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ORDER: The appeal is dismissed. The petition is denied.