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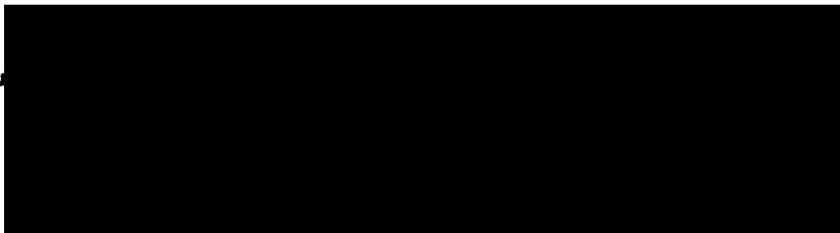
*D2*

FILE: WAC 03 244 55283 Office: CALIFORNIA SERVICE CENTER Date: **OCT 03 2005**

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*

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 federal contractor. It seeks to hire the beneficiary as a public relations 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) counsel'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 documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the 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 (5<sup>th</sup> 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 public relations specialist. Evidence of the beneficiary’s duties includes: the Form I-129; an August 1, 2003 letter from the petitioner and counsel’s response to the director’s request for evidence.

At the time of filing, the petitioner stated that the beneficiary’s duties would entail conducting comparative marketing studies in terms of enhancing and developing a positive image for the company; using multi-media programs to influence the way the company is viewed by the public; conducting advertising campaigns, developing public relations program, and evaluating probable new sources of clients, all with the aim of reaching targeted markets designed to meet the company’s goals and objectives; analyzing marketing conditions, and devising a public relations program intended to maintain a favorable public image for the company; creating and writing press releases and advertising copies; supervising the preparation and distribution of fact sheets and news releases to potential clients, in order to publicize the company’s business activities; writing reports of the findings regarding the clients’ opinions so that the company may correspond to the changing public trends and demands. The petitioner indicated that it required a person with a bachelor’s degree in communications, mass communications or other related field for the proffered position.

The director requested additional evidence that the proffered position meets one of the above listed criteria. Additionally, the director requested evidence that the beneficiary is qualified to perform in the claimed specialty occupation. The director requested a more detailed description of the petitioner’s business including copies of company brochures or any other printed work published by the petitioner which outlines, in detail, the products or services provided by its company. The director requested copies of the petitioner’s signed income tax returns that have been certified by the IRS with all required schedules. The director requested a list of petitions filed by the petitioner. The director requested an explanation from the petitioner, which has filed over 35 H-1B petitions and indicated that it had 36 employees on the Form I-129. The director requested the current employment status and location for all previously approved and/or listed H-1B and locally hired employees. The director requested copies of the Form 941, quarterly wage report for the last three quarters, a payroll summary, a list of all employees with name and immigration status and the petitioner’s organizational chart.

Counsel responded to the director’s request. The petitioner did not submit an explanation as to having filed petitions and having 36 employees listed on the Form I-129. The petitioner did not indicate where its H-1B employees were working. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice

unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner did submit its tax returns which indicated approximately 66 employees.

Counsel stated that the position of public relations specialist is a specialty occupation and referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the Department of Labor's *Dictionary of Occupational Titles (DOT)* and the *O\*NET*. Counsel stated "the position of public relations specialist has always been determined, in the past, by [CIS] as a specialty occupation. . . ." Counsel submitted internet postings for public relations specialist positions. Counsel stated that this position is a new position for the petitioner.

In his denial, the director referred to the *Handbook* and found that the overwhelming number of duties, as described by the petitioner, were most similar to the duties of Advertising, Marketing, Promotions, Public Relations, and Sales Managers – occupations which do not normally require a baccalaureate level of study. The director found that the position did not meet any of the preceding criteria for classification as a specialty occupation.

On appeal, counsel contends the director's conclusions are erroneous and asserts that the proffered position meets all four of the listed criteria as a specialty occupation and refers to the *Handbook* and the *DOT* to support his contentions. Counsel asserts that the *DOT*'s SVP rating of 7 supports his contentions. 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. For this reason, the AAO does not rely on the *DOT* information.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, and, accordingly, considered the evidence of record in the light of the 2004-2005 edition of the *Handbook*. Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of a public relations specialist in the *Handbook*. According to the *Handbook*, 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. The *Handbook* notes that as managers recognize the growing importance of good public relations to the success of their organizations, they increasingly rely on public relations specialists for advice on the strategy and policy of such programs.

According to the *Handbook*, 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. This is similar to the proffered position in that the duties include, among others, conducting comparative marketing studies in terms of enhancing and

developing a positive image for the company; using multi-media programs to influence the way the company is viewed by the public.

With respect to the educational qualifications required of public relations specialists, 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.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the public relations specialist position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits several internet job postings for a public relations specialist. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The advertised positions are for organizations that are not similar to the petitioner. For example, Nextel Communication is a telecommunications firm, Star Commonwealth is a social services organization, and Bonnie Henson Communications is a public relations firm. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent 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. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The duties parallel those in the *Handbook* for a public relations specialist, an occupation that does not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Therefore, for the reasons related in the preceding discussion, 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.