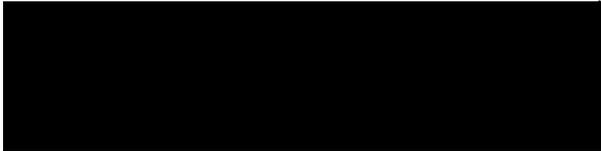




U.S. Citizenship  
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Services

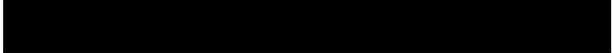
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prevent clearly unwarranted  
invasion of personal privacy**



*D2*

FILE: EAC 04 087 53534 Office: VERMONT SERVICE CENTER Date: **SEP 06 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, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 property management company and seeks to employ the beneficiary as a public relations manager. 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).

The director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a public relations manager. Evidence of the beneficiary's duties was set forth in the petitioner's letter filed in support of the Form I-129 petition. According to this evidence the beneficiary would:

- Use every available communication medium in an effort to maintain public awareness of the petitioner's programs;
- Evaluate and direct advertising and promotion programs for compatibility with public relations efforts and serve as the eyes and ears of management in this respect;
- Observe social, economic, and political trends that might ultimately affect the company and make recommendations to enhance the petitioner's image based on those trends;
- Plan and conduct a public relations program designed to create and maintain a favorable public image for the company;
- Plan and direct development and communication of information designed to keep the public informed of the company's services, special programs, accomplishments, and/or point of view;
- Arrange for public relations efforts in order to meet the needs, objectives, and policies of the company;
- Prepare and distribute fact sheets, news releases, photographs, motion pictures, or tape recordings to media representatives and others interested in learning about the petitioner's activities;
- Purchase advertising space and time as required;

- Arrange for and conduct public-contact programs designed to meet the company's objectives utilizing knowledge of changing attitudes and opinions of customers;
- Promote goodwill through such publicity efforts as speeches, exhibits, films, tours, and at public, social, and business gatherings;
- Research data, create ideas, write copy, and lay out artwork, contact media representatives and represent the company before the general public;
- Develop special projects such as campaign fundraisers;
- Direct activities of subordinates;
- Confer with support personnel to coordinate promotions;
- Direct publicity programs, contact people, plan, research, and prepare material for distribution, handle marketing, advertising and/or sales promotion work;
- Confer with labor relations personnel to produce internal communications related to employee-management relations and with financial managers to produce company reports;
- Assist company executives in drafting speeches, arranging interviews, and maintaining other forms of public contact;
- Oversee company archives;
- Respond to information requests; and
- Handle special events such as sponsorship events, parties, web promotions, and other activities aimed at gaining public attention through the press without advertising directly.

The petitioner requires a minimum of a bachelor's degree in arts/humanities for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied but generally fall within those noted for advertising, marketing, promotions, public relations and sales managers. These managers coordinate market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities. The *Handbook* notes that a wide range of educational backgrounds is suitable for entry into the aforementioned positions, but that many employers prefer related experience plus a broad liberal arts background. Bachelor's degrees in sociology, psychology, literature, journalism, philosophy, or other subjects are suitable. Requirements will vary, however, depending on the duties of a particular position. For example, marketing, sales, and promotion management positions may require a bachelor's or master's degree in business administration with an emphasis in marketing. In highly technical industries such as computer and electronics manufacturing a degree in engineering or science combined with a business degree may be preferred. In public relations management positions some employers prefer a bachelor's or master's degree in public relations or journalism. The *Handbook* further notes that most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional or technical personnel. Many managers are former sales representatives, purchasing agents, or promotions specialists. A baccalaureate or higher degree in a specific specialty, or its equivalent, is not, therefore, the minimum requirement for entry into the position. A degree in a wide range of disciplines will suffice. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner does not assert that a degree requirement is common to the industry in parallel positions among similar organizations, and offers no evidence in this regard. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner asserts that it normally requires a degree in a specific specialty for entry into the proffered position. In support of this assertion, the petitioner states that the duties of the position were previously performed by Jeremy Brockway and presented a copy of his Bachelor of Arts degree from the University of Delaware. The documentation submitted, however, does not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The degree of bachelor of arts is not a degree in a specific specialty. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree in a generalized title, such as liberal arts, without further specification does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Further, 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 or 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.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The duties of the proffered position are routinely performed by individuals with educational backgrounds in a wide range of unrelated disciplines, and their performance does not require the theoretical and practical application of a body of highly specialized knowledge.

Finally, the duties of the proffered position appear to be routine for advertising, marketing, promotions, and public relations managers. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As previously noted, a degree in a wide range of educational disciplines will qualify an individual to perform the duties of those positions. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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