



U.S. Citizenship
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FILE: WAC 04 247 50139 Office: CALIFORNIA SERVICE CENTER Date: **AUG 02 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 provides heating, ventilation, air conditioning, and plumbing. It 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. Counsel submits a timely appeal.

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 the 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 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's duties are as follows: plan and conduct public relations programs that create and maintain a favorable public image for the petitioner and its customers; plan and direct the development and communication of information designed to keep the public informed of services offered, accomplishments, or the petitioner's point of view; prepare and distribute fact sheets, news releases, and photographs to distributors/buyers who may be interested in products and services; purchase advertising space and time in an attempt to reach United States and Asian markets; arrange for and conduct public-contact programs designed to meet objectives using knowledge of changing attitudes and opinions of distributors, clients, and employees; promote goodwill through publicity efforts such as exhibits, films, and question and answer sessions; and research data, create ideas, write copy, lay out artwork, contact media representatives or represent the company directly before distributors and buyers. The response to the request for evidence elaborated on the proposed duties. The petitioner requires a baccalaureate degree, or its equivalent, in communication, marketing, or public relations.

The director determined that the proffered position parallels a public relations manager as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The director stated that the *Handbook* reports that a public relations manager does not require a baccalaureate degree in a specific specialty. The director found the proposed duties generic in nature, providing no detail as to the uniqueness or complexity of the position. The director stated that the petitioner's business does not extend beyond the scope of the local community and that the business therefore lacks a consumer base that is extensive or complex enough to require the services of a public relations staff.

On appeal, counsel asserts that the proposed duties have been sufficiently described and that the offered position is that of a public relations specialty. According to counsel, the *Handbook* indicates that the standard credential for a public relations specialist is a bachelor's degree as it states that "many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communication." Counsel states that the *Handbook* conveys that substituting work experience for education is acceptable; however, he maintains that this not a standard requirement for the job. Counsel states that substituting experience for education is consistent with the practice of allowing the beneficiary of an H-1B petitioner to meet the qualifications requirement by having three years of progressive employment experience for each year of formal education that is lacking. Counsel asserts that the proffered position is a specialty occupation because of its specific vocational preparation (SVP) rating in the *Dictionary of Occupational Titles* (DOT). Counsel asserts that the nature and complexity of the job duties of a public relations specialist involve knowledge of public relations principles and techniques, and public relations management and administration, including organizational development, writing, and emphasizing annual reports, new releases, proposals, scripts, speeches, visual communications, desktop publishing, social science research, and survey design and implementation, as described in the *Handbook*. Counsel refers to the submitted Internet postings to establish

that the offered position is a specialty occupation. Counsel states that *Matter of General Atomic Company*, 17 I&N Dec. 532 (Comm. 1980) indicates that the particular size of a business or industry is not required to establish an industry standard of a baccalaureate degree requirement. Counsel maintains that *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal., 1989) indicates that the size of the company is irrelevant to showing the petitioner's need for a person with a degree. The proposed duties are specialized and complex, counsel states, as they require "familiarity with the media production, communication, and dissemination techniques and methods," and "the advanced knowledge of principles and methods for showing, promoting, and selling products or services." This includes "marketing strategy and tactics, product demonstration, sales techniques, and sales control systems." According to counsel, the duties are distinct from ordinary administrative, business, or supervisory positions because they "require an in[-]depth understanding of public relations principles and techniques, public relations management and administration, including organizational development." Counsel states that the beneficiary may "develop programs to analyze problems and opportunities, define goals, identify the target audience, and recommend and plan activities." According to counsel, the proposed duties require specialized knowledge acquired from a bachelor's degree in public relations, communication arts, mass communications, journalism, advertising, and related areas.

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 2006-2007 edition of 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)).

Counsel's reference to and assertions about the relevance of information from the *DOT* is not persuasive. 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 *Handbook* is routinely consulted by the AAO for information about the duties and educational requirements of particular occupations. The AAO agrees with counsel in that the offered position parallels that of a public relations specialist. However, the AAO finds that the *Handbook* reports that employers do not require a baccalaureate degree in a specific specialty for this occupation. 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.

Many colleges and universities offer bachelor's and postsecondary degrees in public relations, usually in a journalism or communications department. In addition, many other colleges offer at least one course in this field. A common public relations sequence includes courses in public relations principles and techniques; public relations management and administration, including organizational development; writing, emphasizing news releases, proposals, annual reports, scripts, speeches, and related items; visual communications, including desktop publishing and computer graphics; and research, emphasizing social science research and survey design and implementation. Courses in advertising, journalism, business administration, finance, political science, psychology, sociology, and creative writing also are helpful. Specialties are offered in public relations for business, government, and nonprofit organizations.

Although the *Handbook* indicates “[m]any entry-level public relations specialists have a college major in public relations, journalism, advertising, or communication,” it also reveals that “[t]here are no defined standards for entry into a public relations career.” Read collectively, the *Handbook's* passages indicate that many entry-level public relations specialists may possess a bachelor's degree in certain fields; but employers do not *require* a bachelor's degree in a specific specialty for a career in public relations.

Counsel's statement that substituting experience for education is consistent with the practice of allowing the beneficiary of an H-1B petitioner to meet the qualifications requirement by having three years of progressive employment experience for each year of formal education that is lacking does not establish that the offered position is a specialty occupation. Educational equivalency is considered by CIS only when a specific degree does not exist in an occupational field. *Tapis Int'l vs. INS*, 94 F.Supp. 2d 172 (D. Mass. 2000). With the case here, specific baccalaureate degrees exist for public relations specialists.

The AAO's conclusion, based on the above discussion and the evidence in the record, is that the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree, or its equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to job postings.

The AAO is not persuaded by the job postings, however. The companies in the postings are either dissimilar in nature to the petitioner or their nature is not revealed. Bloomingdales is a department store and Herbalife International is a herbal company. Fallon Worldwide and Digital Insight are not described. The AAO notes that counsel's assertion that *Matter of General Atomic Company* and *Young China Daily* indicate that the particular size of a business or industry is not required to establish an industry standard of a baccalaureate degree requirement is undermined by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as it specifically states that the petitioner's degree requirement must be common to the industry in parallel positions among organizations similar to the petitioner. Thus, the petitioner's size is a factor in establishing the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Moreover, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) was not discussed in *Matter of General Atomic Company* and *Young China Daily*. *Matter of General Atomic Company* dealt with whether the beneficiary qualified as a professional; it did not discuss whether or not the offered position was a specialty occupation. It is for these reasons that the postings do not persuasively establish that a specific degree requirement is common to the industry in parallel positions among organizations similar to the petitioner.

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must show 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. The *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for a career in public relations. Furthermore, the petitioner submitted no evidence in the record reflecting that the proposed duties, which involve public relations activities related to heating, ventilation, air conditioning, and plumbing, have such a complexity or uniqueness as to require a baccalaureate degree in communication, marketing, or public relations. As such, the evidence fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must 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. The proposed duties parallel those of a public relations specialist. The *Handbook* reveals that employers do not require a bachelor's degree in a specific specialty for a career in public relations. The petitioner submitted no evidence in the record to demonstrate that the proposed duties, which are public relations activities for a heating, ventilation, air conditioning, and plumbing company, are so specialized and complex as to require a baccalaureate degree in communication, marketing, or public relations. Thus, the evidence fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.