

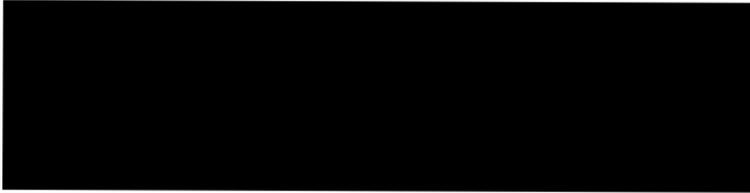
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U.S. Citizenship
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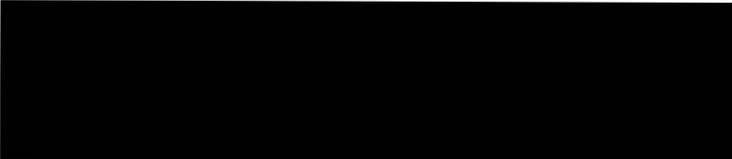
DL

FILE: WAC 04 215 51311 Office: CALIFORNIA SERVICE CENTER Date: APR 14 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.

Robert P. Wiemann, Chief
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 jewelry wholesaler that seeks to employ the beneficiary as a public relations specialist. 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 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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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 (5th 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 is seeking the beneficiary’s services as a public relations specialist. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s July 29, 2004 letter in support of the petition; and the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail: planning and conducting public relations designed to create and maintain a favorable public image for the petitioner; planning and directing development and communication of information designed to keep the public informed of the petitioner’s products and services; arranging for public relations efforts, such as exhibitions, trade shows, community events, and Chamber of Commerce conferences; planning and conducting marketing campaigns aimed at promoting the petitioner’s public image and its products; organizing community functions and sponsoring public events supported by city and state governments; planning and developing company brochures aimed at promoting public awareness of the company’s products and services and to increase the company’s market competitiveness and market shares; promoting goodwill through speeches at various community events, exhibits, films, tours and question/answer sessions; and representing the petitioner during community projects and at public, social and business gatherings. The petitioner stated that a qualified candidate would possess a bachelor’s degree in business administration, communication, journalism, psychology or any related field.

To determine whether the duties just described are those of 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 or its equivalent is the normal minimum requirement for entry into the particular position; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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)).

The director found that the *Handbook* indicates that the position of a public relations specialist is not a specialty occupation. The AAO finds the petitioner has described duties normally performed by both public relations specialists and public relations managers. However, the duties of the proffered position, as listed, are so generic that they provide no meaningful description of the tasks that the beneficiary would perform for the petitioner on a daily basis. Many of the duties are taken directly from the Department of Labor's *Dictionary of Occupational Titles (DOT)* listing for public relations specialists, and it is not clear how they would relate to the petitioner's business. In its response to the director's request for evidence, the petitioner did not expand on the duties of the position, despite the director's request that the petitioner "[p]rovide a detailed description of the work done, including specific job duties."

As previously noted, the AAO requires information regarding the specific duties of a proffered position, as well as the nature of the petitioning entity's business operations, to make its determination regarding the nature of that position and its degree requirements, if any. In the instant case, the record offers a description of the type of work performed within the occupation of public relations specialists and public relations managers, rather than a description of the proffered position's duties as they relate to the petitioner's business. In particular, the petitioner, a jewelry wholesaler, states that the beneficiary would organize community functions and sponsor public events supported by city and state governments and promote goodwill through speeches, exhibits, films, tours and question/answer sessions. The record does not establish that these are the types of activities in which the petitioner, a jewelry wholesale company, is involved. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the AAO finds that the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. See *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

Additionally, the AAO notes that counsel's argument regarding the *Handbook's* use of the word "many," related to the areas of specialization for public relations specialists, is not persuasive. The *Handbook* states, "Many entry-level public relations specialists have a college major in public relations, journalism, advertising, or communication." Counsel asserts that this establishes that these areas of specialization are, therefore, the normal minimum requirement for entry into the field. The *Handbook* does not indicate that these are required areas of specialization or that employers normally hire public relations specialists with this educational background.

While the petitioner stated that the position is a public relations specialist, it also has elements of the duties of a public relations manager. The 2006-2007 edition of the *Handbook* describes educational requirements for entry into the public relations manager field:

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.

...

For public relations management positions, some employers prefer a bachelor's or master's degree in public relations or journalism.

As noted above, 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 *Handbook* clearly states that there is no requirement for a degree *in a specific specialty* for entry into this field. A wide range of areas of study would be appropriate preparation for a position as a public relations manager.

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. On appeal, counsel refers to the Public Relations Society of America (PRSA), with its large number of both professional and student members, and which produces two publications. Counsel also provides information regarding PRSA's accreditation program. The AAO notes that there is no specific educational requirement in order to apply for accreditation with the PRSA. Any member "of partner organizations who have at least five years of paid, full-time experience in the professional practice of public relations, or in the teaching or administration of public relations courses in an accredited college or university" may take the accreditation examination. This clearly reflects that one can be accredited by the industry's professional association without a degree in a specific specialty. Counsel also references information from the PRSA that states, "[A] college degree is essential and a basic grounding in the liberal arts is strongly recommended." Again, the AAO notes that the PRSA requirement does not establish that a degree in a specific specialty is required for entry into the field.

On appeal, counsel states, "Our research clearly demonstrates that many reputable business or professional organizations require a bachelor's degree in public relations, communications, and journalism for the position of Public Relations Specialist or other parallel positions." Counsel then lists four companies, the vacant positions within those companies, and the degree required; counsel states that the positions were posted as classifieds on PRSA's website. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

The record also fails to establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. The AAO finds the petitioner to have provided no evidence that would support such a finding. Accordingly, it cannot establish its position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex

that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. There is no evidence in the record regarding the petitioner's past hiring practices, and therefore, the petitioner has not established the position as a specialty occupation on this basis.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As previously discussed, the petitioner's description of the duties of the proffered position is too generic to determine what specific tasks the beneficiary would perform on a daily basis, and many duties were included that did not appear to be related to the petitioner's business. This generic description, which precluded satisfaction of the proffered position under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), also makes it impossible to assess whether the proffered position's duties meet the specialized and complex threshold of the fourth criterion. As the petitioner has provided no description of the specific tasks to be performed by the beneficiary, the record contains no evidence to establish the specialized and complex nature of those tasks. Therefore, the proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth 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.

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