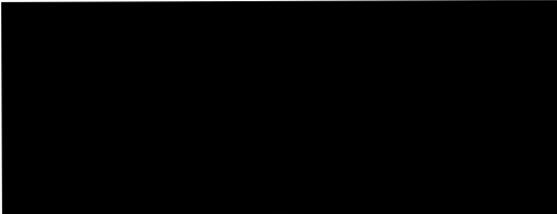




U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY



D2

FILE: SRC 04 135 51098 Office: TEXAS SERVICE CENTER Date: **JUL 21 2006**

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, 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 Internet access, interactive media, and websites. It seeks to employ the beneficiary as a public relations assistant. 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; (5) the petitioner's motion to reopen/reconsider; (6) the decision to deny the motion; and (6) the Form I-290B, the brief, and supporting evidence. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a public relations assistant. 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 will provide support to the director of marketing and public relations by assisting in coordinating public relations and Internet marketing for the petitioner's interactive web clients and ISP customers. For the proposed position the petitioner requires a bachelor's degree in marketing and advertising.

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* conveys that a public relations manager does not require a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) does not indicate that the minimum requirement for all jobs in the field must be a bachelor's or master's degree. Counsel asserts that a position qualifies as a specialty occupation if an employer often or normally requires a baccalaureate degree, notwithstanding that such a degree is not specifically required for all entry-level positions in the occupation. Counsel contends that because the *Handbook* states a "college degree combined with public relations experience . . . is considered excellent preparation for public relations work," the petitioner's requirement of a baccalaureate degree is not excessive. Counsel references a prior AAO decision to support her assertion. According to counsel, the submitted job postings establish that Internet marketing positions require a baccalaureate degree. The offered position is newly created, counsel states. Counsel maintains that the record contains the letter from the petitioner's chief operations officer regarding lateral positions that require a baccalaureate degree, and resumes of the employees holding those lateral positions. Counsel asserts that the beneficiary is qualified for the offered position on the basis of her educational background and internships.

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)(I) 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)).

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. Nevertheless, the AAO finds that the *Handbook* explains that employers do not require a baccalaureate degree in a specific specialty for this occupation. It 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.

Even though 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 AAO finds that the *Handbook's* passages indicate that although many entry-level public relations specialists may possess a bachelor's degree in certain fields, employers do not *require* a bachelor's degree in a specific specialty for a career in public relations. Thus, employers do not normally require a baccalaureate degree in a specific academic specialty for a public relations specialist position.

The AAO is not persuaded that the prior AAO decision regarding an administrative services manager position establishes that the proposed position is a specialty occupation. Counsel states that in the prior decision the AAO concluded that the administrative services manager position qualified as a specialty occupation, as it required a bachelor's degree based on the *Handbook's* statement that “postsecondary training in hotel or restaurant management [was] preferred for most hotel management positions.” The prior AAO decision is not binding here as it is not a precedent decision. While 8 C.F.R. § 103.3(c) provides that Immigration and Naturalization Service precedent decisions are binding on all CIS employees in the administration of the Act,

non-precedent decisions are not similarly binding. Further, each nonimmigrant petition is a separate proceeding. The AAO does not have access to the record of proceeding in the previous case, and cannot determine the factual basis for its previous decision.

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 job postings are not persuasive: the companies in the postings differ in nature from the petitioner, an Internet access, interactive media, and website provider; or their nature is not revealed in the posting. Eagleville Hospital and Empire BlueCross BlueShield are in the health care industry; DuPage Credit Union is a financial institution; International Federation of Accountants is not fully described in the posting; however, it is a non-profit; Delta Funding is a mortgage company. For the stated reasons the job postings fail to 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 assisting in coordinating public relations and Internet marketing for interactive web clients and ISP customers, have such a complexity or uniqueness as to require a baccalaureate degree in marketing and advertising. As such, the evidence fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner must show that it normally requires a degree or its equivalent for the position. The October 25, 2004 letter from the president of the petitioning entity states that the petitioner "requires a bachelor's degree for all assistant positions." The October 25, 2004 letter from the chief operations officer indicates that the submitted resumes of three employees who occupy lateral positions (sales and marketing assistant to the chief executive officer, sales and marketing assistant to the president, and sales and marketing assistant to vice president of sales and marketing) to the one that is offered here, reflect that each of the employees hold a baccalaureate degree. The AAO finds that this evidence is insufficient in establishing a past practice of normally requiring a baccalaureate degree for the proposed position as the resume of one of the three employees reflects that the employee holds a bachelor of arts degree in history, which is not in the field of marketing and advertising. Consequently, the petitioner fails to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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, and the *Handbook* reveals that employers do not require a baccalaureate degree in a specific specialty for a career in public relations. The petitioner submitted no evidence to demonstrate that the proposed duties, which are public relations activities related to assisting in coordinating public relations and Internet marketing for interactive web clients and ISP customers, are so specialized and complex as to require a baccalaureate degree in marketing and advertising. 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.