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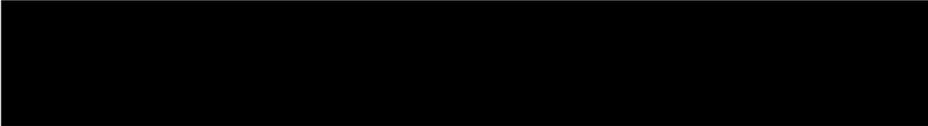
DEC 13 2007

FILE: EAC 03 222 50998 Office: VERMONT SERVICE CENTER Date:

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 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 engaged in automobile sales and financing, and seeks to employ the beneficiary as a public relations consultant. 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 on March 14, 2005, concluding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the request for evidence and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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 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:

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 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 proposed position.

In the support letter, dated July 10, 2003, the petitioner described the beneficiary's proposed position as the public relations consultant as follows:

1. Planning and implementing public relations programs to introduce our products and services nationwide and in Canada;
2. Planning and directing the development and communication of information to our target market through advertising and expanded internet marketing procedures;
3. Creating advertising ideas and writing advertising copy;
4. Purchasing advertising space and time in various media;
5. Coordinating public relations functions with our sales division to publicize promotional sales, product availability, etc.

The petitioner also stated that the "minimum educational requirement to perform the duties of this specialty occupation is a Bachelor's degree in Public Relations, Journalism or a related field."

On February 12, 2004, the director requested additional information about the proffered position, and the nature, scope and activity of the petitioner's business. The petitioner responded with a detailed description of the job duties; two support letters; copies of the petitioner's website and several advertisements of the company; a copy of the petitioner's federal income tax return for the period from December 4, 2002 to November 30, 2003; and, copies of petitioner's monthly bank statements for the period from December 2003 to March 31, 2004.

The director denied the petition on March 14, 2005, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. The director noted that the petitioner does not have the organizational complexity to operate the type of business that would require a public relations consultant.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation. Counsel further states that the petitioner submitted substantial evidence, including the job description and the two letters submitted by experts in the field of public relations, to establish that the proffered position is a specialty occupation.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds them closely aligned to the responsibilities of two occupational groupings discussed in the *Handbook*: (1) public relations specialists and (2) advertising, marketing, promotions, public relations, and sales managers.

In its discussion of the duties of public relations specialists, the 2006-2007 edition of the *Handbook* states the following:

An organization's reputation, profitability, and even its continued existence can depend on the degree to which its targeted 'publics' support its goals and policies. 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 . . . .

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 . . . .

Media specialists draft press releases and contact people in the media who might print or broadcast their material . . . .

Public affairs specialists also arrange and conduct programs to keep up contact between organization representatives and the public . . . . These media specialists represent employers at community projects... In addition, they are responsible for preparing annual reports and writing proposals for various projects . . . .

In large organizations, the key public relations executive . . . may develop overall plans and policies with other executives. In addition, public relations departments employ public relations specialists to write, research, prepare materials, maintain contacts, and respond to inquiries.

People who handle publicity for an individual or who direct public relations for a small organization may deal with all aspects of the job. They contact people, plan and research, and prepare materials for distribution. They also may handle advertising or sales promotion work to support marketing.

The *Handbook* reports the following educational requirement for individuals seeking employment as a public relations specialist:

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 . . . . 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 . . . .

These findings do not support a finding that a bachelor's degree is normally required for entry into this occupation. The *Handbook* states that educational requirements vary, and that a range of degrees may be acceptable for entry into the position. As noted previously, CIS interprets the term "degree" to mean not just any degree in any field, but one in a specific specialty that is directly related to the proposed position. A bachelor's degree in a specific specialty, however, is not a minimum requirement for entry into this occupation.

The *Handbook* describes the duties of advertising, marketing, promotions, public relations, and sales managers as follows:

The objective of any firm is to market and sell its products or services profitably. In small firms, the owner or chief executive officer might assume all advertising, promotions, marketing, sales, and public relations responsibilities. In large firms, which may offer numerous products and services nationally or even worldwide, an executive vice president directs overall advertising, promotions, marketing, sales, and public relations policies. (Executive vice presidents are included in the *Handbook* statement on **top executives**.) Advertising, marketing, promotions, public relations, and sales managers coordinate the market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities.

Advertising managers oversee advertising and promotion staffs, which usually are small, except in the largest firms. In a small firm, managers may serve as liaisons between the firm and the advertising or promotion agency to which many advertising or promotional functions are contracted out....

*Promotions managers* supervise staffs of promotion specialists. These managers direct promotion programs that combine advertising with purchase incentives to increase sales. In an effort to establish closer contact with purchasers—dealers, distributors, or

consumers—promotion programs may use direct mail, telemarketing, television or radio advertising, catalogs, exhibits, inserts in newspapers, Internet advertisements or Web sites, in-store displays or product endorsements, and special events. Purchasing incentives may include discounts, samples, gifts, rebates, coupons, sweepstakes, and contests.

*Marketing managers* develop the firm's marketing strategy in detail. With the help of subordinates, including *product development managers* and *market research managers*, they estimate the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets—for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy to help firms maximize profits and market share while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services, and they oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users.

*Public relations managers* supervise public relations specialists. (See the *Handbook* statement on **public relations specialists**.) These managers direct publicity programs to a targeted audience. They often specialize in a specific area, such as crisis management, or in a specific industry, such as health care. They use every available communication medium to maintain the support of the specific group upon whom their organization's success depends, such as consumers, stockholders, or the general public. For example, public relations managers may clarify or justify the firm's point of view on health or environmental issues to community or special-interest groups.

Public relations managers also evaluate advertising and promotion programs for compatibility with public relations efforts and serve as the eyes and ears of top management. They observe social, economic, and political trends that might ultimately affect the firm, and they make recommendations to enhance the firm's image on the basis of those trends....

The *Handbook* reports the following educational requirement for individuals seeking employment in this 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.

When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specialization, e.g., business administration, can perform the duties, the position does not qualify as a

specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specific course of study.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. Counsel has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in positions that are parallel to the proffered position and found in organizations similar to the petitioner. The petitioner has not demonstrated that its degree requirement exists in parallel positions among similar organizations.

The petitioner submitted two opinion letters from individuals employed in the communications and public relations industry. One letter is from a professor of the college of communication at Boston University, stating that the beneficiary's degree in journalism "seems essential to have taught her to be a proficient writer, thinker and planner." The second letter is from a professor at Columbia University. The author concludes that a degree in journalism is an acceptable degree for a position in public relations, and the proposed position "requires a bachelor's degree in either Public Relations or Journalism."

While the letters conclude that the duties of the proposed position require the beneficiary to possess a bachelor's degree, an inadequate factual foundation to support these opinions has been established. The authors do not note the location or size of the petitioner. Nor do the authors indicate whether they reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. While some public relations specialists may require a bachelor's degree as a prerequisite for employment, the authors do not give sufficient details about the complexity of the details of the proposed position to substantiate their conclusions, which differ from those in the *Handbook*. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). While the opinions expressed in these letters are relevant to the proceedings before the AAO, there is nothing in the record that independently documents the expertise or position claimed by the writers. The letters also do not cite to any industry or trade publication to support their conclusions. 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)). Thus, these letters are insufficient to establish the petitioner's degree requirement as an industry norm in parallel positions among similar organizations.

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with at least a bachelor's degree in a specific specialty. The AAO finds no evidence that would support such a finding, as the position proposed in the petition is very similar to the public relations specialists position described in the *Handbook*. Although counsel for the petitioner asserts that the petitioner requires an employee with a bachelor's degree to fill the position of public relations consultant since the proposed job duties are "highly complex and specialized," the petitioner did not submit any documentation corroborating this statement. 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)). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Accordingly, the petitioner has not established its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this 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. However, no such evidence has been submitted to demonstrate that the proposed position qualifies under this criterion. In response to the director's request for evidence, the petitioner stated that the president of the company has a bachelor's degree in business administration, and the sales employee has over 15 years experience in sales. However, the petitioner does not establish its hiring practice for the position of public relations specialist and does not specify that it exclusively recruits and employs only individuals with a bachelor's degree. Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

While the petitioner states that a degree is required, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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. To interpret the regulations in 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 a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. Based on the foregoing discussion, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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.

Counsel cites *Young China Daily v. Chappell*, 742 F. Supp. 552 (NDCal, 1989). She asserts that the court's findings precluded the director from focusing on the size of the petitioner and instead must rely on the duties of the proffered position. Counsel asserts that the size of the petitioner is immaterial to whether the proffered position is a specialty occupation. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Absent documentation, the assertions of counsel will not satisfy the petitioner's burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). More importantly, counsel has not distinguished the duties of the position from other public relations and marketing positions which do not normally require a degree in a specific field.

To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge usually associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement. The *Handbook* does not indicate any usual association between the type of position here in question and at least a bachelor's degree in a specific specialty. Further, the evidence of record does not demonstrate that the specific duties to be performed by the beneficiary in the context of the petitioner's business operations possess the requisite specialization and complexity. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The position in this petition is not a specialty occupation, so the beneficiary's qualifications to perform the duties of a specialty occupation are inconsequential. Accordingly, the AAO will 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.