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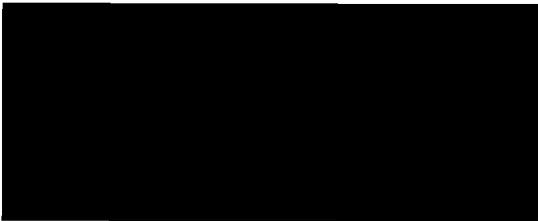
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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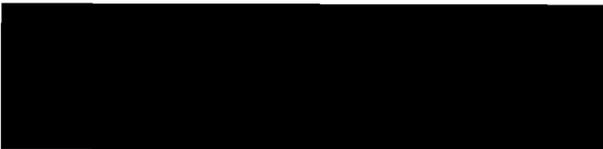
FILE: EAC 07 133 52477 Office: VERMONT SERVICE CENTER Date: APR 01 2010

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 petitioner is an environmental construction management firm that 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.

On appeal, counsel for the petitioner asserts that the offered position qualifies as a specialty occupation as it meets all four listed regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As will be discussed below, the AAO finds that the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. Accordingly, the director's decision to deny the petition shall not be disturbed. The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner seeks the beneficiary’s services as a public relations specialist. The petitioner described the beneficiary’s duties in its letter dated April 2, 2007, as follows:

- Act as the primary liaison between [the petitioner] and our potential clients;

- Coordinate set-up of job codes, job numbers, excel spreadsheets and template proposals that will be disseminated to the public regarding the services that our company provides;
- Respond to the public's written and telephonic requests for information regarding our services;
- Based on data supplied by clients and in consultation with the Business Development Director and project managers, prepare thorough reports on the scope of work and the associated costs;
- Conduct searches for and pursue potential customer by consulting print and electronic media resources;
- Maintain systematic records of contacts with potential clients, pre-bid conferences and potential teaming partners.

(Bullets added).

The petitioner is described as a "full service provider of environmental construction management and health and safety services," with 40 employees and a gross annual income in excess of \$7 million per year. It stated that the proffered position requires at least a bachelor's degree in public relations, marketing, management, or a closely related field of study. The petitioner explained that these are the minimum requirements for the position at its business and "in similar positions in similar businesses."

At the time of filing, counsel for the petitioner stated that the position qualifies as a specialty occupation pursuant to 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (3) because the degree requirement is common to the industry in parallel positions among similar organizations and because the petitioner normally requires a degree or its equivalent for the position.

The director denied the petition on July 31, 2007, finding that the proposed public relations specialist duties do not require a bachelor's degree. Citing the Department of Labor's (DOL's) 2006-2007 *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner asserts that the proffered position lists all four criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel contends that "a 'specific' baccalaureate degree for entry into an occupation is not required by law," citing to *Tapis International v. INS*, 94 F. Supp. 2d 172 (D. Mass 2000) in support of her claim. Counsel further contends that "a closer reading of the OOH description establishes that a baccalaureate degree or its equivalent related to public relations is a normal minimum requirement for entry into the position." Counsel also states that the Department of Labor's Online Wage Library "assigns the position of Public Relations Specialist with an Education and Training Code 5 – Bachelor's degree." In support of the appeal, the petitioner submits information obtained from the DOL's Foreign Labor Certification Online Wage Library & Data Center, Internet job postings for public relations specialist positions, a letter from the petitioner's director of business development confirming that the company has historically required a

"B.A. or B.S. in Business or Liberal Arts when advertising for the position of Public Relations Analyst," and a copy of a previous job posting for the position of "marketing coordinator," with the petitioning company.

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 turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. In addition, the *Handbook's* discussion of occupations assists in analyzing the duties of a particular position and determining the corresponding occupation.

The *Handbook* reports that the occupation of "public relations specialist" may be described as follows:

Public relations specialists handle organizational functions such as media, community, consumer, industry, and governmental relations; political campaigns; interest-group representation; conflict mediation; and employee and investor relations. They do more than "tell the organization's story." They must understand the attitudes and concerns of community, consumer, employee, and public interest groups and establish and maintain cooperative relationships with them and with representatives from print and broadcast journalism.

Public relations specialists draft press releases and contact people in the media who might print or broadcast their material. Many radio or television special reports, newspaper stories, and magazine articles start at the desks of public relations specialists. Sometimes the subject is an organization and its policies toward its employees or its role in the community. Often the subject is a public issue, such as health, energy, or the environment, and what an organization does to advance that issue.

Public relations specialists also arrange and conduct programs to keep up contact between organization representatives and the public. For example, they set up speaking engagements and often prepare speeches for company officials. These media specialists represent employers at community projects; make film, slide, or other visual presentations at meetings and school assemblies; and plan conventions. In addition, they are responsible for preparing annual reports and writing proposals for various projects.

Upon review of the petitioner's description of the proffered position, the AAO finds that, although the *Handbook* lists a more expansive range of duties than that of the proffered position, the proffered position corresponds generally with the *Handbook's* statements regarding the occupation of a public relations specialist for a small company. The *Handbook*, 2010-11 edition, states:

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 efforts.

Regarding the educational requirements for public relations specialists, the *Handbook*, 2010-11 edition reports the following educational requirements:

A bachelor's degree in a communications-related field combined with public relations experience is excellent preparation for a person interested in public relations work.

Education and training. Many entry-level public relations specialists have a college degree in public relations, journalism, marketing, or communications. 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, healthcare, science, engineering, sales, or finance, for example.

Thus, the *Handbook* recognizes that a diverse group of degrees or varied experience may satisfy employer requirements for entry into a public relations specialist position, confirming that there are no defined standards for entry into such a position. The director in this matter correctly interpreted the *Handbook's* report regarding educational requirements for a public relations specialist's position. While the *Handbook* indicates that a variety of degrees may be advantageous for the position, the lack of defined standards for entry into the position precludes a conclusion that the position would categorically qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) as read in the context of the statutory and regulatory definitions of specialty occupation. It is incumbent on the petitioner to establish that its particular position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO acknowledges counsel's statements that the DOL assigns the public relations specialist occupation an Education and Training Code of five (5). The AAO notes that the DOL's Foreign Certification Data Center provides a five-tier scale of Education and Training Codes for Professional Occupations (ETCPO), the fifth of which reads:

Five: Bachelor's Degree

Completion of the degree program generally requires at least 4 years but not more than 5 years of full-time equivalent academic work.

These codes are provided for an employer's use in calculating the prevailing wage for Labor Condition Application (LCA) purposes. They are not statements of objective educational requirements of a particular position, but are intended as a tool for an employer's use in calculating the prevailing wage for a position designated on the LCA that the employer asserts as requiring a bachelor's degree, whether or not in a specific specialty. Further, an ETCPO level does not distinguish between degrees that are in a specific specialty directly related to a proffered position and those that are not.

In short, counsel's assertions about the code she references are not persuasive. The code does not specify the particular type of degree that a job would normally require; does not indicate whether a baccalaureate or higher degree in a specific specialty is a minimum for entry into the type of position proffered here; and does not rebut the *Handbook's* information that such positions do not normally require a degree in a specific specialty for entry into the occupation.

Finally, the AAO addresses counsel's statement that "the USCIS conclusion that a position of a public relations specialist does not qualify as a specialty occupation because the position does not require a 'specific' baccalaureate degree is a misinterpretation of immigration law and regulatory guidelines." Counsel, citing to *Tapis International v. INS*, 94 F. Supp. 2d 172, 175 (D. Mass. 2000), states that a position that requires a bachelor's degree from a limited number of academic fields plus experience in a specialized occupation qualifies as a specialty occupation

Counsel's contention that the situation here is analogous to the one in *Tapis International v. INS* is incorrect. Unlike *Tapis*, the record does not establish a situation where a combination of a bachelor's degree in a limited number of fields and specialized experience is necessary for the performance of the proffered position. The *Handbook* only indicates that a bachelor's degree in one of several fields is "excellent preparation" for the occupation. The petitioner itself, based on new information submitted on appeal, claims to require a bachelor's degree in Business or Liberal Arts and two years of previous experience in "marketing, sales or professional business environment." Therefore, the petitioner has not established that the proffered position requires a bachelor's degree in a limited number of fields closely related to the proffered position, or any specialized experience. Cf. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968) (finding that, in general, a degree in business administration is insufficient to qualify a holder thereof as a member of the professions). Furthermore, the offered position in *Tapis International* was that of an interior design showroom manager, an unusual position for which there is no specific degree available.

In this matter, the record does not establish that the duties of the position require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to consider whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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 record does not include any evidence from firms, individuals, or professional associations regarding an industry standard.

Regarding parallel positions in the petitioner's industry, counsel submits Internet job postings for public relations specialists. Several of the listings provided either fail to offer meaningful descriptions of the positions advertised or rely on duties unlike the duties listed by the petitioner. Many of the advertisers, which include a school, a natural gas marketing company, a communications firm, a conveyor belt maintenance company, a non-profit organization, a translation and language services company, an aviation industry association, a protective paint and coating manufacturer, a staffing company, and an international airport, are not similar to the petitioner's environmental consulting engineering firm. Neither do these listings indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. Although one of the job postings is for a public affairs specialist for the Sacramento office of "the largest global engineering design firm," the listing does not specify the requirement of a degree in a specific specialty. Rather, the job posting requires "a Bachelor's Degree in a relevant field." Thus, the advertisements are insufficient to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has not submitted sufficient documentation to establish that the proffered position involves duties with the requisite level of complexity or uniqueness; rather the petitioner has provided a general description of the occupation without identifying any complex or unique tasks pertinent to the petitioner's business that would elevate the position to one that requires the knowledge associated with a bachelor's degree in a specific discipline. The record lacks evidence or analysis establishing that particular duties of the proffered position differ from the routine duties of a skilled public relations account executive. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), 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. The petitioner states that it has been in the business since 1985. On appeal, the petitioner submits a letter dated August 31, 2007 from its director of business development who states that the company "has historically included a request for a B.A. or B.S. in Business or Liberal Arts when advertising for the position of Public Relations Analyst (formerly a Marketing Coordinator title)." The petitioner states that previous position-holders have had "one of the referenced degrees," and the beneficiary's immediate predecessor has a bachelor's degree in communications.

The record, however, does not include documentary evidence substantiating that other individuals who have been employed in a similar position to the proffered position had a bachelor's degree in a specific discipline relating to the position. 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)). Furthermore, the petitioner's letter states a broader range of possible acceptable degrees than previously indicated. At the time of filing, the petitioner stated that it requires a degree in Public Relations, Marketing, or

Business management, and now the petitioner indicates that the degree requirement is merely "business" or "liberal arts." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the AAO observes that the petitioner's desire to employ an individual with a bachelor's degree or equivalent does not establish that the position is a specialty occupation. 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 any other way would lead to absurd results. If USCIS 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 non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. *See generally Defensor v. Meissner*, 29 F.3d at 387. Accordingly, the AAO finds that the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline and, therefore, establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner has established that the proffered position meets this criterion. Counsel asserts:

Based on the duties of the proffered position, the position of Public Relations Specialist as offered by [the petitioner] can only be performed by an individual with a bachelor's degree. As previously stated, [the petitioner] is a full service provider of environmental construction management and health and safety services. The Public Relations Specialist must be able to effectively communicate verbally and in writing the scope of [the petitioner's] work and services to potential clients and the public, and must be able to understand the applicability/feasibility of the company's services based on research and understanding of the nature of the clients' business and organization. The proffered position involves sophisticated analysis of consumer trends and competitive services, and the ability to prepare and write press releases, articles, brochures and reports related [to] the Petitioner's services for public dissemination."

The duties of the proffered position show that the tasks relate primarily to the routine duties of a public relations account executive. Although the petitioner asserts that the duties of the position are the duties of a specialty occupation, the petitioner has not explained what particular duties of the proffered position comprise tasks that require the application of specialized or complex knowledge associated with the attainment of a baccalaureate degree or higher degree in a specific discipline. The petitioner has not adequately explained

how the duties of the proffered position differ from those of a generalist position in this same field. The petitioner has not substantiated that the nature of its business requires a public relations specialist who must perform duties that are specialized and complex such that the position should be designated a specialty occupation. Although the position may require skill, the petitioner has not established that that skill may be attained only through the specialized coursework attendant to a four-year university level education in a specific discipline. The record does not include sufficient evidence to demonstrate that the petitioner established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

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.