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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE: EAC 07 124 52172 Office: VERMONT SERVICE CENTER Date: APR 30 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 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 an insurance and financial services agency that is an independent branch of an insurance company doing business throughout the United States. To employ the beneficiary as a public relations/advertising specialist, the petitioner endeavors to classify her 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).

On appeal is the director's denial of the petition on two grounds, namely, failures to establish (1) that the proffered position is a specialty occupation and (2) that the beneficiary is qualified to serve in the claimed specialty occupation. As will be discussed below, the AAO finds that the petitioner has established neither a specialty occupation position nor that the beneficiary is qualified to serve in the specialty occupation asserted by the petitioner. Accordingly, the director's decision to deny the petition shall not be disturbed.

The AAO bases its decision upon consideration of the entire record, including all of the documents submitted in support of the petition from the filing of the Form I-129 through the filing of this appeal.

The AAO will first address the specialty occupation issue.

The AAO applies the following statutory and regulatory framework in its review of specialty occupation issues.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] 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 [2] 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.

On the Form I-129 and its addendum, the petitioner describes the proposed duties and their approximate worktime requirements as follows:

Writes, plans, directs and coordinates all advertising techniques for the agency focusing on the [beneficiary's] specific ethnic group [(people from Iran)] via internet, magazines, and newspapers. (25%)

Prepares marketing and advertising ideas for management. (10%)

Consults with the sales and marketing departments of both [the] state and home office[s] to meet and comply with state and federal regulations for [the] insurance business. (20%)

Decides on the style, content and length of each advertisement to better serve the need of the Agency. (10%)

Stud[ies] competitors' advertising techniques targeting similar ethnic group in order to promote and set apart our Company's services. (10%)

Directs advertising negotiations for rates and placement of ads. (5%)

Design[s] and develop[s] brochures specific to [the] targeted ethnic group. (10%)

Write[s] insurance related articles for the community (publications) and to educate the community. Plan[s] and direct[s] seminars for ethnic groups to introduce [the] agency's products and services. (10%)

The function of the ideal individual with the knowledge and experience of the above job description is primarily geared toward a large ethnic group residing in the United States.

The petitioner's description of the proffered duties in its March 30, 2007 letter filed with the petition is substantially the same as the above.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty-occupation status to a particular position 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 recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The AAO finds that the record's descriptions of the proposed duties most closely comport with the general duties that the 2008-2009 edition of the *Handbook* identifies with the Public Relations Specialist occupational group. The *Handbook's* chapter on this occupational group does not indicate that the public relations specialist jobs constitute a class of positions 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. While the *Handbook* notes that many public relations specialists hold college degrees in public relations, journalism, advertising, or communication, it states, "There are no defined standards for entry into a public relations career." The following excerpts from the Training, Qualifications, and Advancement section of the *Handbook's* chapter "Public Relations Specialists" illustrates the point that a wide variety of educational, training, and experience backgrounds can equip a person to serve as a public relations specialist:

There are no defined standards for entry into a public relations career. A college degree in a communications-related field combined with public relations experience is excellent preparation for public relations work.

Education and training. Many entry-level public relations specialists have a college degree 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 care, science, engineering, sales, or finance, for example.

* * *

Other qualifications. Public relations specialists must show creativity, initiative, and good judgment and have the ability to communicate thoughts clearly and simply. Decision-making, problem-solving, and research skills also are important. People who choose public relations as a career need an outgoing personality, self-confidence, an understanding of human psychology, and an enthusiasm for motivating people. They should be competitive, yet able to function as part of a team and be open to new ideas.

The AAO also finds that, to the extent that they are developed in the record, the duties that comprise the proffered position do not establish it as a particular position whose satisfactory performance would normally require at least a bachelor's degree, or the equivalent, in a specific specialty. Rather, it appears that a wide spectrum of training, experience, and education backgrounds short of a bachelor's degree in a specific specialty could adequately equip a person for the proffered position.

The AAO comments as follows on counsel's submission of Internet printouts from the Department of Labor's Foreign Labor Certification Center's Online Wage Library (OWL).

The printout on Advertising and Promotion Managers is not relevant. It relates to an occupational category not cited on the Form I-129 or the related Labor Condition Application. Also, the lowest annual salary it reports is \$4,700 more than the salary cited on the Form I-129 and the wage rate cited on the Labor Condition Application. The printout's lowest annual salary is also \$7,987 higher than the prevailing wage that the petitioner reports on the Labor Condition Application.

The printout on Public Relations Specialists is relevant, as it relates to the correct occupational category, and the AAO notes the section, partly highlighted by counsel, that states: "O*Net JobZone: 4 -- Education and Training Code: 5 Bachelor's degree." The quote, however, does not reference any specific specialty for the degree. Further, the OWL statement is a condensed version of what the O*Net actually states about its Job Zone 4 designation. See the O*Net Online Help Center, at www.online.onetcenter.org/help/online/zones, for a discussion of Job Zone 4, which explains that this Zone signifies only that most but not all of the occupations within it require a bachelor's degree. Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. Moreover, the information in the *Handbook* establishes that the proffered position is not in one of those Zone 4 occupations that requires a bachelor's degree. Therefore, the OWL information is not probative of the proffered position qualifying as a specialty occupation.

As the evidence of record does not establish that the particular position proffered here 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 petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether 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 AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition.

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty.

The AAO acknowledges but does not accord significant evidentiary weight to the letter from the owner of a public relations firm who attests that "it is essential" that "employees hired for the position of Advertising Specialist/Public Relations have a degree from an accredited university or equivalent work experience in the marketplace." The letter neither expressly states nor otherwise conveys that the degree must be in a specific specialty. Further, the attributes that the author expects the degree or degree-equivalent experience to signify (such as exceptional communication skills, interpersonal skills, the ability to work under tight deadlines) are not exclusively the products of work or studies in any particular discipline.

Finally, the collection of advertisements submitted into the record does not indicate a common requirement for a degree in a specific specialty.

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." Upon consideration of all the evidence submitted in support of the petition, the AAO finds that the record does not develop complexity, uniqueness, or a combination of both as aspects rendering the proffered position incapable of performance by anyone but a person with at least a bachelor's degree in a specific specialty. The evidence of record does not distinguish the proffered position as unique from or more complex than the wide range of public relations specialist positions for which the *Handbook* indicates no requirement for a bachelor's degree or higher in a specific specialty.

The petitioner has also not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), by establishing that the employer normally requires a degree or its equivalent for the position. The record does not include documentary evidence of the petitioner's recruiting and hiring history for the type of position that is the subject of the present petition.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As is evident in the list of proposed duties and the *Handbook's* information about the Public Relations Specialist occupational group, both quoted earlier in this decision, the proposed duties presented in the record do not indicate that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

The AAO also finds that the director was correct to deny the petition on the additional basis that the petitioner had failed to establish that the beneficiary has the credentials to qualify him for service in the claimed specialty in accordance with Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), and the implementing regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The degree referenced by section 214(i)(1)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

In implementing 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have [1] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or

higher degree in the specialty occupation, and [2] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's non-degree credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) would require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;¹
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . .

To satisfy the beneficiary-qualification criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), a petitioner must demonstrate three years of specialized training and/or work experience for each year of college-level training the alien lacks. However, the express terms of this provision provide that time in specialized training and/or work experience will be counted only to the extent that "[i]t is clearly demonstrated [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [3] that the alien has recognition of expertise

¹ The petitioner should note that, in accordance with this provision, USCIS accepts a credentials evaluation service's evaluation of *education only*, not experience.

in the specialty.” Further, this criterion states that the recognition of evidence in the specialty must be evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation²;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary does not have a degree or formal education past high school. To establish the beneficiary’s qualifications to serve in a position for which the petitioner claims the need for a bachelor’s degree in a specific specialty, the beneficiary relies upon the March 21, 2007 document entitled “Work Experience Evaluation Report” produced by [REDACTED] of the Global Education Group. However, [REDACTED] report has no probative value. Neither the Work Experience Evaluation Report nor the attached resume indicate that at the time of the writing she was “an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual’s training and/or work experience,” as 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) requires for USCIS recognition of competency as an evaluator of work experience and/or training evaluators. Also, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) recognizes credential evaluation services as competent to issue evaluations of education only. Further, the Experience Evaluation Report contains no substantive analysis of how the evaluator reached her conclusion.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision.

² *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority’s opinion must state: (1) the writer’s qualifications as an expert; (2) the writer’s experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

EAC 07 124 52172

Page 11

As always, in visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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