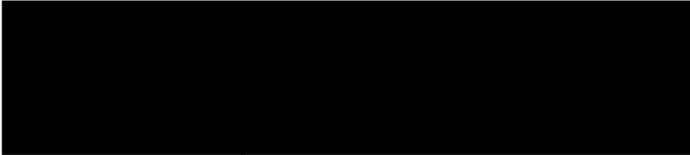


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

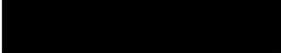
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

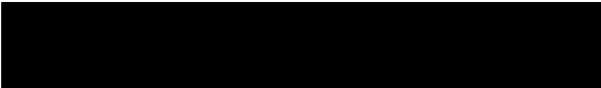


U.S. Citizenship
and Immigration
Services



D₂

FILE:  Office: CALIFORNIA SERVICE CENTER Date: DEC 06 2010

IN RE: Petitioner: 
Beneficiary: 

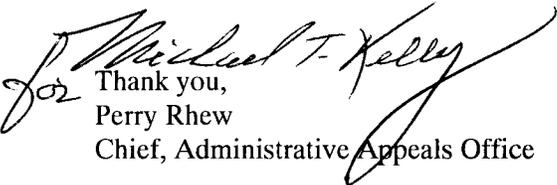
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.


Thank you,
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California 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 is a financial services company with 500 employees. It seeks to employ the beneficiary as a public relations specialist 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, concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

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

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

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 one 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.

In this matter, the petitioner seeks the beneficiary’s services as a public relations specialist. In summary, the petitioner describes the proffered duties as follows:

- Act as public representative of the petitioner by preparing, drafting, and releasing oral and/or written public speeches (60% of the time);
- Develop employee communications systems, including printed materials and newsletters, corporate videos, video conferencing, Internet support, E-mail distributions, and multi-media presentations (30%);
- Develop and execute the petitioner’s annual advertising plan and budget (5%); and
- Evaluate the success of publicity/media initiatives as well as advertising and promotional programs (5%).

To make its determination whether this employment qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) 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; and a degree requirement in a specific specialty 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 considered by the AAO when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry’s professional association has made a degree in a specific specialty 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 petitioner stated that the proffered position requires a minimum of a bachelor's degree in public relations, communications, or in a related field. In support of this assertion, the petitioner submitted copies of online advertisements from other businesses that are not financial services companies. The petitioner also submitted a copy of the *Handbook's* section on public relations specialists as well as the State of California's Employment Development Department's (EDD) section on public relations specialists. The *Handbook* section states that "[m]any entry-level public relations specialists have a college degree in public relations, journalism, advertising, or communication," while the EDD's section states the following:

A college degree combined with public relations experience, usually gained through an internship, is considered excellent training for public relations work. Preferred majors are public relations, English, or journalism. . . .

The beneficiary has a U.S. Bachelor of Arts degree in telecommunications.

On April 15, 2009, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation.

In response to the RFE, counsel stated that, "[a]ll of [the petitioner's] employees at the similar level in the hierarchy as Public Relations Specialist possess a minimum of bachelor's degree." However, counsel did not submit any supporting documentation from the petitioner to demonstrate that the petitioner employs anyone else who has at least a bachelor's degree or the equivalent in a specific specialty in a similar position (or even at "the similar level in the hierarchy") as the proffered position. Moreover, the organizational chart submitted by the petitioner in response to the RFE does not indicate that the petitioner employs any other public relations specialists. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also submitted four additional advertisements for public relations specialists from other financial groups, however one of the advertisements requires a bachelor's degree without requiring that the degree be in a specific specialty, one of the advertisements states that the person filling the position "should" have a bachelor's degree without requiring at least a bachelor's degree or the equivalent in a specific specialty, one of the advertisements is for a position in the Philippines, and the final advertisement just states that higher education is required without specifying whether there is a minimum degree or equivalent experience required in a specific specialty.

The director denied the petition on May 20, 2009.

On appeal, counsel for the petitioner argues that the petitioner has demonstrated that the industry standard for public relations specialists is to require a college degree and, also, that the petitioner, which is a large bank trying to do business in an economic downturn, needs someone with at least a bachelor's degree or higher to perform the proffered duties. Counsel states in his brief, "[t]here are no rules and regulations requiring that the proffered position specify that a bachelor's degree in a specific specialty is required. . . ." Counsel appears to have overlooked 8 U.S.C. § 1184(i)(1) of the Act, which clearly states that a specialty occupation requires the

“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.” (Emphasis added.)

The AAO will now determine whether the proffered position is a specialty occupation.

The AAO agrees with counsel that the proffered position is closest to that of a public relations specialist as defined in the Handbook. According to the *Handbook*, 2010-11 online edition, “[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”; however this does not mean that a bachelor’s degree or equivalent in a communications-related field is a minimum requirement for the proffered position, but only that someone who has this background will be well-prepared for the job. The *Handbook* goes on to state:

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.

Many colleges and universities offer bachelor’s and postsecondary programs leading to a degree in public relations, usually in a journalism or communications department. In addition, many other colleges offer courses in this field. Courses in advertising, business administration, finance, political science, psychology, sociology, and creative writing also are helpful. Specialties may be offered in public relations for business, government, and nonprofit organizations.

Therefore, although a bachelor’s degree in a communications-related field may well prepare someone for the position, the *Handbook* stops short of stating that at least a bachelor’s degree or the equivalent in a specific specialty is a normal minimum requirement for public relations specialists.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

As the *Handbook* indicates no specific degree requirement for employment as a public relations specialist, and as it is not self-evident that, as described in the record of proceeding, the proposed duties comprise a position for which the normal entry requirement would be at least a bachelor’s degree, or its equivalent, in a specific specialty, the AAO concludes that the performance of the proffered position’s duties does not require the beneficiary to hold a baccalaureate or higher degree in a specific specialty. Accordingly, the AAO finds that the petitioner has not established its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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). This 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)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The copies of advertisements submitted by the petitioner with the original petition as well as in response to the RFE do not establish a degree requirement in parallel positions, as either the advertisements are from companies that are not in the same industry as the petitioner or they do not require at least a bachelor's degree in a *specific specialty*.

Additionally, the copy of the EDD document submitted by the petitioner states that, while a college degree combined with public relations experience is considered excellent training for public relations work, "preferred majors are public relations, English, or journalism," which, together with the advertisements submitted, indicates that there is a wide spectrum of degrees acceptable for public relations specialist positions and therefore is not indicative of a requirement for any body of highly specialized knowledge attainable only by a bachelor's or higher degree, or the equivalent, in a specific specialty.

The petitioner also failed to satisfy 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." The evidence of record does not refute the information provided in the *Handbook*, the EDD document, and the advertisements submitted by the petitioner, which indicate that there is a wide spectrum of degrees acceptable for public relations specialist positions. Although the petitioner has stated that it is a large bank operating in a tough economy, the size of the employer and the state of the economy in and of themselves do not demonstrate that the proffered position is unique from or more complex than public relations specialist positions that can be performed by persons without a specialty degree or its equivalent. According to the organizational chart, the proffered position reports to a Chief Marketing Officer and is at the same level as a marketing administrator. No evidence was provided that the proffered position is any more unique or complex compared to the public relations specialists described in the *Handbook* for whom a bachelor's degree or its equivalent in a *specific specialty* is not required.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel refuses to provide information about whether the petitioner has previously hired people in the proffered position, stating that "[w]hether or not the Public Relations Specialist

position is a new or old position or whether the Petitioner previously had a public relations division is inconsequential as to the uniqueness and/or complexity of the job duties of the Public Relations Specialist. . . .” However, it is clear from 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) that this is a relevant consideration if the petitioner wants to demonstrate that the proffered position is a specialty occupation under this criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position’s duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO does not find that the duties, as so generically described in this record of proceeding, reflect a higher degree of knowledge and skill than would normally be required of public relations specialists not equipped with at least a bachelor’s degree, or its equivalent, in a specific specialty. Nor do they represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications beyond those of a public relations specialist. As mentioned above with respect to the organizational chart, the proffered position reports to a Chief Marketing Officer and is at the same level as a marketing administrator. On appeal, counsel states:

[a]s the public representative of the bank, the Public Relations Specialist will be the primary spokesperson on behalf of the bank and will prepare, draft, and release oral and/or written public speeches; develop employee communications via printed materials, newsletters, corporate videos, video conferencing, internet support, email distributions and multimedia presentations; develop and execute the bank’s annual advertising plans and budgets; and evaluate and assess the success of publicity/media initiatives, advertising and promotional programs for compatibility with the communication’s objective.

However, this statement is not supported by the organizational chart, which indicates that the beneficiary will report to a Chief Marketing Officer and function at the same level as a marketing administrator, and the job description, which states that she will be “a” public representative of the bank (not “the” primary spokesperson of the bank), and which also states that developing the advertising plan and budget as well as evaluating publicity initiatives together only constitute 10% of her overall duties. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position’s title, its level of authority within the organizational hierarchy, or the associated job responsibilities. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Again, it does not appear that the beneficiary’s duties will be sufficiently specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO, therefore, concludes that the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petition will be denied and the appeal dismissed. 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.


Page 8

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