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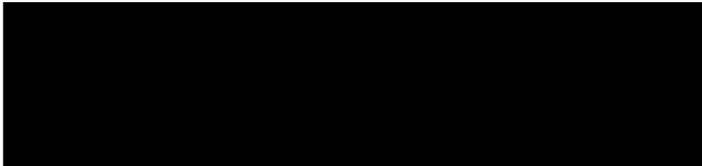
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: WAC 08 009 51077 Office: CALIFORNIA SERVICE CENTER Date: **JAN 05 2010**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

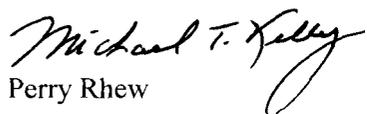
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Per 
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. 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 non profit organization 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 she did not find the proffered position to meet any of the criteria for classification as a specialty occupation.

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

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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 is seeking the beneficiary’s services as a public relations specialist. The record indicates that the beneficiary holds the U.S. equivalent to a bachelor of science in education, with a minor in journalism. According to the job description submitted by the petitioner in its letter of support dated October 2, 2007, the beneficiary will be required to perform the following duties:

The Public Relations Specialist is responsible for organizational functions such as media, community, consumer, industry, and government relations, political campaigns; interest-group representation; conflict mediation and employee and investor relations. Draft press releases; contact radio personnel and print media for special reports; develop and arrange programs to keep up contact between organization representatives and the public. (20 hours per week, 50% of the time).

Develop overall plans and policies with other executives; write, research, prepare materials, maintain contacts, and respond to inquiries; represent employer at community projects; prepare annual reports and write proposals for various projects; plan conventions and keep

the public informed about the activities of government agencies and officials. (10 hours per week, 30% of the time).

Assists with developing and strengthening relationships with target state and national media; assists coordination of media events and executes follow-up activities; pitches stories and responds to media requests; maintains and updates media lists; helps measure effectiveness of media relations and develops/implements efforts to broaden and improve relationships; help coordinate major announcements, write press releases, backgrounders, and conducts follow up efforts; coordinates contacts for media interviews with staff, community partners, intermediaries and others. (10 hours per week, 20% of the time).

The director found the initial evidence insufficient, and consequently issued an RFE on December 17, 2007. The director requested additional evidence demonstrating that the position was a specialty occupation, and further requested additional details regarding the petitioner's business. In a response dated February 26, 2008, the petitioner responded to the petitioner's requests. The petitioner provided the following updated description for the position of public relations specialist:

Plans and implements policies and procedures programs for all areas of public relations; evaluates existing programs, services, techniques, and procedures, and establishes methods for installation of programs; relates policies and regulations to new employees through a formal orientation program as [a joint] effort with the Director of Personnel; participates in area service and civic groups to gather information and seek support of these groups in charitable activities on behalf of the organization; develops and maintain[s] current knowledge of public relations principles and practices; establishes, coordinates, and maintains a quarterly service report that is informative and community-minded. (30 hours per week, 60% of the time).

Organizes and establishes continuing internal communications through the use of bulletin boards, employee publications, and committee meetings; orders needed forms, supplies, and goods as authorized; makes available to the CEO, newspaper, radio, and television accounts of noteworthy items of general concern that impact government regulations; develops rapport with the media, which wants to know the facts, and establishes with it mutual understanding of the individual's right to privacy. (5 hours per week, 25% of the time).

Contacts the media when we have innovative programs, positive developments, employee promotions, personal achievements, retirements or other goodwill information; encourages open houses and tours to exhibit positive programs; develops and displays general information visual aids to promote a better understanding of organization objectives. (5 hours per week, 25% of the time).

On April 4, 2008, the director denied the petition. The director found that the proffered position was not a specialty occupation as the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by USCIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (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 2008-09 edition of the *Handbook* describes the position of public relations specialist in relevant part 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.

To identify the educational requirements for employment as a public relations specialist, the AAO turns again to the 2008-09 *Handbook*, which includes the following information at the Training, Other Qualifications, and Advancement section of its chapter on Public Relations Specialists:

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, marketing, 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, healthcare, science, engineering, sales, or finance, for example.

While the *Handbook* discusses both the types of degrees that may prepare individuals to seek employment as public relations specialists and the degree preferences of certain employers when seeking public relations specialists, it does not indicate that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the occupation. The fact that many individuals who seek employment as public relations specialists have bachelor's degrees in related fields and that some employers prefer to hire such individuals for their public relations openings does not satisfy the degree requirement set forth in the first criterion. Employer preference is not synonymous with the "normally required" language of the criterion.

On appeal, the petitioner references the web address <http://www.stats.bls.gov/oco/ocos014.htm>, claiming that this site clearly demonstrates that the proffered position requires a minimum of a bachelor's degree for entry into the position of public relations specialist. The petitioner does not provide a print-out of this website, nor does it indicate the date on which it was accessed. Moreover, when the AAO enters this web address, it is brought to the *Handbook's* page describing Medical and Health Service Managers. 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)).

As the *Handbook* clearly indicates there is no degree requirement for the occupation of public relations specialist, the AAO concludes that the petitioner has failed to establish that its position is a specialty occupation under the first criterion.

The AAO now turns to a consideration of whether the petitioner may qualify its position under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) -- a specific degree requirement is common to the industry in parallel positions among similar organizations, or the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. On appeal, the petitioner has provided eight newspaper and Internet job postings from businesses seeking public relations specialists to establish that a degree is the norm within the petitioner's industry. However, the RFE issued on December 17, 2007 clearly requested the petitioner to submit additional evidence to establish that the degree requirement is common to the industry in parallel positions in similar organizations. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was

adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. Therefore, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

No evidence demonstrating that the degree requirement is common to the industry in parallel positions in similar organizations was submitted prior to adjudication. Therefore, the petitioner cannot establish its position as a specialty occupation under the criterion's first prong.

With regard to the requirements of the second prong, the AAO finds nothing in the record to establish that the position is either so complex or unique that it can be performed only by a degreed individual. Accordingly, the petitioner is unable to establish its position as a specialty occupation under either of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner's ability to establish that it normally requires a degree or its equivalent when filling its proffered position, as required by the third criterion, the AAO reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

In this matter, the petitioner submitted a copy of a job posting for a budget analyst position, as well as a copy of the diploma for [REDACTED], who apparently is employed by the petitioner in this capacity. The record indicates that [REDACTED] holds a bachelor of science in business administration. However, despite apparently hiring a degree person for the position of budget analyst, it does not appear that the petitioner has previously hired for the proffered position. The record contains no evidence of the petitioner's hiring practices in connection with the position of public relations specialist. Accordingly, the AAO finds that proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has again reviewed the duties of the proffered position, as described by the petitioner in its response to the director's request for evidence, to determine whether they reflect a higher degree of knowledge and skill than would normally be required of a public relations specialist or represent an amalgam of jobs that require different skills and qualifications. Further, the AAO has also considered the petitioner's statements on appeal regarding the complexity of the proffered position.

Having reviewed the duties of the proffered position, the AAO finds no evidence in the record to show that the responsibilities of the proffered position require greater knowledge or skill than that routinely needed by public relations specialists who work in demanding and complex situations to promote the goals of the businesses employing them. Further, the job, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills not normally possessed by a public relations specialist. As a result, the AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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