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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

[Redacted]

D₂

Date: **FEB 07 2012** Office: VERMONT SERVICE CENTER FILE: [Redacted]

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:
[Redacted]

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 service center director denied the instant 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.

On the Form I-129 visa petition, the petitioner stated that it is a law firm. In order to employ the beneficiary in what it designates as a communications and marketing specialist position, the petitioner seeks 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had failed to establish that the proffered position qualifies as a position in a specialty occupation. A brief was submitted on appeal. Whether it was prepared by counsel or the petitioner is unclear. It argued that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has concluded that the director did not err in his determination to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, 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 the brief in support of the appeal.¹

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. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

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.

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 requires [(1)] theoretical and practical application

¹ Although counsel for the petitioner indicated that a brief and additional evidence would be submitted in support of the appeal within 30 days, no such submission was ever made to the AAO. Therefore, the record will be considered complete as currently constituted.

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 [(2)] 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 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 a particular position 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the visa petition, counsel submitted evidence that the beneficiary was awarded a master's degree in communications studies by Kean University in Union, New Jersey. Counsel also submitted a letter from the petitioner's owner. That letter states that the petitioner is a law firm that specializes in providing legal and consulting services to entertainment industry clients, including Chinese performing arts companies. It states the duties of the proffered position as follows:

1. Develop and oversee public relations strategies to promote clients and specific events that are managed, marketed and promoted by the firm.
2. Increase visibility and create favorable public opinion for upcoming shows and performances.
3. Create English and Chinese language promotional and marketing collateral material including press releases, brochures, and advertisement copy, website and social medi[a] content, etc.
4. Identify and pursue media opportunities and communicate with media outlets.
5. Arrange and oversee promotional appearances by our firm's clients.
6. Engage the services of outside public relations, advertising and marketing firms, and oversee their work in developing comprehensive promotional campaigns in all types of media for events in the U.S. and China.
7. Establish and maintain effective communication with existing and potential entertainment clients.
8. Draft marketing materials including web-page content, brochures, ads and other collateral material to promote our firm to other law firms in the U.S. as a boutique firm offering legal services and management representation for entertainment troupes in the U.S. and China.
9. Establish communication and maintain viable working relationships with venue owners and producers of live events in the U.S. and China.
10. Research venues for live performance tours throughout the U.S. and China, prepare customized event collateral materials and negotiate with vendors to achieve favorable terms.

The petitioner's owner also stated that the proffered position requires a minimum of a bachelor's degree in communications, marketing, or a closely-related field.

On August 16, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel provided (1) various documents showing that the petitioner represents entertainers, (2) various e-mail communications, (3) a letter, dated September 13, 2010, from the petitioner's owner; (4) a letter, dated September 2, 2010, from the executive director of the theater management and programming office of Kean University; (5) a letter, dated September 3, 2010, from the chairperson of the department of communications studies of Kean University; and (6) a letter, dated September 16, 2010, from counsel.

The petitioner's September 13, 2010 letter referred to the e-mail communications as evidence of the scope of the services he offers. Those e-mails demonstrate that the petitioner's owner communicates with companies in China and Korea pertinent to business matters, but do not demonstrate the nature or scope of the proffered position, or its relative degree of complexity, specialization, or uniqueness.

In her September 2, 2011 letter, the executive director of theatre management and programming of Kean University stated that she has over 25 years of management experience in theater and arts programming, and has, in that capacity, employed people in positions similar to the proffered position. She stated that she has always hired people with a minimum of a bachelor's degree in communications, marketing, or a similar field for such positions, which she stated is the normal minimum requirement in the industry. She stated that such a degree "provides the necessary theory and practice in marketing, etc., which the position requires, and which is best acquired during a program leading to at least a bachelor's degree in the field."

In his September 3, 2010 letter, the communications studies chairperson stated that the beneficiary's studies in that field prepared her for the proffered position. It does not indicate that such a degree is necessary to perform the duties of the proffered position.

Counsel's letter states that the petitioner's owner has performed the duties of the proffered position until now, but that his client roster has grown and he now requires the services of a marketing professional. Although counsel asserted that the petitioner's business has grown, he did not assert that its marketing duties have become more complex, specialized, or unique. In addition, absent evidence to the contrary, it appears that the petitioner's owner has been able to perform these duties without at least a bachelor's degree in communications, marketing, or a closely-related field.

The director denied the petition on December 30, 2010, finding, as was noted above, that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In that decision, the director analyzed the proffered position as a position for an Advertising, Marketing, Promotions, Public Relations and Sales Manager position, as described in the U.S.

Department of Labor (DOL), Bureau of Labor Statistics *Occupational Outlook Handbook (Handbook)* chapter of the same name.

The appeal brief asserts that the DOL's *O*NET Online* service indicates that public relations specialist positions such as the proffered position require bachelor's degrees. It also cites the *Handbook* as support for the proposition that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The appeal brief asserts that the proffered position is more correctly classified as a public relations manager position than an advertising, marketing, promotions, public relations, or sales manager position, as described in the *Handbook*, because two of the duties specified involve public relations.

The AAO will now address the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent. In this instance, the petitioner may be able to meet this criterion by establishing (1) the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

Initially, the AAO notes that the inclusion of public relations duties does not distinguish a public relations specialist position from a public relations manager position. The AAO perceives no flaw in the finding of the director that the proffered position is a position for an advertising, marketing, promotions, public relations, or sales manager position, as described in the *Handbook*. However, the AAO will proceed with the analysis of the specialty occupation issue assuming, *arguendo*, that the proffered position is a position for a public relations specialist.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² The *Handbook* provides the following information pertinent to the education of public relations specialists:

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.

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos086.htm> (last accessed January 23, 2012).

That many entry-level public relations specialists have a college degree does not indicate that it is a minimum entry requirement. Further, the *Handbook* indicates that, even for those positions filled by individuals with a degree, a major in public relations, journalism, marketing, or communications may suffice. In summation, the *Handbook* offers no support for the proposition that a public relations specialist position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

The appeal brief asserts that *O*NET Online* demonstrates that the proffered position qualifies as a specialty occupation. On January 23, 2012, the AAO accessed the pertinent section of the *O*Net Online* Internet site, which addresses Public Relations Specialists under DOL's Standard Occupational Classification code of 27-3031.00. Contrary to the petitioner's statement, *O*Net Online* does not state a requirement for a bachelor's degree. Rather, it assigns Public Relations Specialists a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the *O*Net Online* does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *O*Net Online* information is not probative of the proffered position being a specialty occupation.

The executive director of theatre management and programming of Kean University stated that a bachelor's degree in communications, marketing, or a similar field for positions like the proffered position is the normal minimum requirement in the industry, but she did not support this conclusion by citing to any corroborating evidence. Further, she did not comment on the *Handbook's* statistics-based information to the effect that public relations specialist positions do not categorically require a bachelor's degree in any specific specialty, and whether she was aware of it is unclear.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The AAO will accord very little weight to the uncorroborated assertion of the executive director of theatre management and programming of Kean University.

The record contains no other evidence to suggest that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position. Therefore, the petitioner has not satisfied the criterion of 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). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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 was observed above, the *Handbook* provides no support for the proposition that the petitioner's industry, or any other, requires public relations specialists to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of public relations specialists that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. Unless the letter from [REDACTED] of theatre management and programming, a letter the AAO found to have little evidentiary value, is considered to be an industry letter, the record contains no letters or affidavits from others in the petitioner's industry. The record contains no other evidence pertinent to the requirements of the petitioner's industry.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner demonstrates that, notwithstanding that other public relations specialist positions in the petitioner's industry may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such a degree.

The only evidence in the record that might have differentiated the proffered position from other public relations specialist positions is the description of duties provided by the petitioner. Those described duties, however, appear to be merely duties typical of any public relations job. Developing and overseeing public relations strategies, increasing visibility and creating favorable public opinion, creating promotional and marketing material, identifying and pursuing media opportunities and communicating with media outlets, and arranging and overseeing promotional appearances, for instance, contain no indication of complexity or uniqueness relative to other public relations specialist positions that, according to the *Handbook*, can be performed by individuals without at least a bachelor's degree in a specific specialty or its equivalent.³

³ It is also noted that the certified Labor Condition Application provided in support of the instant petition designates the position as a Level II public relations specialist. Such a designation indicates that the proffered job is not, in fact, complex, unique, or specialized, as such a higher-level position would be compensated at

The petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with a degree; and has not, therefore, met the requirements of the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner's owner asserted that he previously performed the duties of the proffered position, but that his client base increased. As indicated above, the record contains no indication, however, that the petitioner's owner has a degree in communications, marketing, or a closely-related field. The petitioner has not previously hired a specialty occupation worker for the proffered position, and the record contains no indication that the position has become more complex. The petitioner has not demonstrated that it normally requires a degree or its equivalent for the position, and has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁴

Finally, the AAO will address the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

As was noted above, however, the described duties of the proffered position appear to encompass routine duties associated with public relations positions in general. Engaging the services of outside public relations, advertising, and marketing firms and overseeing their work, establishing and maintaining communication with clients and entertainment venue owners, drafting marketing materials, and researching venues for performances contain no hint of specialization and complexity beyond that of a typical public relations specialist position, which the *Handbook* indicates does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The record does not contain explanations and clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge required to perform its duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The vague

least at a Level III ("experienced), and more likely, a Level IV ("fully competent") wage level. See U.S. Department of Labor, Employment and Training Administration, *Prevailing Wage Determination Policy Guidance*, (Revised November 2009).

⁴ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

description of the duties of the proffered position contains no indication of complexity or specialization that would demand a minimum of a bachelor's degree or the equivalent in a specific specialty, especially relative to other public relations specialist positions that, again, according to the *Handbook*, do not have such a minimum entry requirement.

Therefore, the petitioner has also failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), by not developing the proposed duties to an extent establishing their nature as so specialized and complex that their performance would require knowledge usually associated with the attainment of at least a bachelor's degree, or the equivalent, in a specific specialty.

As the petitioner has failed to establish that it has satisfied any one of the supplemental, additional criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO finds that the director was correct in his determination that the record before him failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the argument submitted on appeal has not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

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. The appeal will be dismissed and the petition denied.

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