



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-B, LLC

DATE: NOV. 14, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a property investment and management company, seeks to temporarily employ the Beneficiary as a “public relations specialist” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the California Service Center denied the petition, concluding that the proffered position does not qualify as a specialty occupation. On appeal, the Petitioner asserts that the Director erred.

Upon *de novo* review, we will dismiss the appeal.¹

I. LEGAL FRAMEWORK

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

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

¹ We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). We construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. ANALYSIS

Upon review of the record in its totality, we conclude that the Petitioner has not sufficiently established the substantive nature of the work the Beneficiary would perform during the intended period of employment, which precludes the determination of whether the proffered position qualifies as a specialty occupation under at least one of the four regulatory specialty-occupation criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).²

On the labor condition application (LCA)³ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Public Relations Specialists,” corresponding to the Standard Occupational Classification code 27-3031.

The Petitioner described the proffered position’s duties, and the percentage of the Beneficiary’s time to perform them, as follows:

² The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

³ The Petitioner is required to submit a certified LCA to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the “area of employment” or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. *See Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-46 (AAO 2015).

- Plan and direct public relations programs designed to create and maintain a favorable public image for the employer or client. Program budget varies from \$200 to \$600 a month [6%];
- Create company literature and other forms of communication. Copyedit, proofread, and revise communications [2%];
- Create marketing and promotional materials, both print and electronic. Monthly budget is \$2,004 [6%];
- Work with advertisers such as TV, radio and digital billboards for timely and useable ad submissions. The budget for 2017 is \$15,000 [6%];
- Design and launch email marketing campaigns [5%];
- Recommend, implement and maintain site design and operation [2%];
- Work with manager and business units to determine event budget and manage expenses to that budget [2%];
- Promote products and services through public relations initiatives [4%];
- Create and deliver press releases, media relations content, case studies, white papers, executive bios, corporate newsletter content, social media content, and speaking proposals. Monthly budget is approximately \$500 [6%];
- Identify, develop and execute communications strategy for key media contacts and customer references. Research media coverage and industry trends [5%];
- Conduct extensive media outreach, prepare briefing materials, [c]oordinate scheduling and logistics, [c]oordinate conference, trade shows, and press interviews [5%];
- Help to clarify the organization's point of view to their main constituency [2%];
- Develop and maintain a comprehensive list of press, media, and community communication medi[a]; writes, produces, and distributes press kits, feature stories, calendar listings, public service announcements (psas [sic]), and other items for all sponsored events [5%];
- Conduct media relations efforts; establishes and maintains contacts with key media personnel; develop and implement[] press conferences, photo sessions, and press/media events such as creating awareness of ongoing upgrades of the Performing Arts Center to become a state-of-the-[a]rt Center . . . [6%];
- Direct the development, management, production and delivery of publications, including season brochures, flyers, posters, direct mail promotions, calendars, and other marketing support materials; writes, designs, and produces materials as required [6%];
- Direct the development and implementation of a variety of special events and promotional activities. Average monthly budget is \$3,000-\$5,000 [6%];
- Develop and manage[] a promotional display and signage program [6%];
- Assist with sales and market analysis of public relations programs [6%];
- Upon renters' requests, direct the provision of photographic and video services to renters of the Arts Center including documentation of special events [6%];

- Lead, guide, and train staff/student employees, interns, and/or volunteers performing related work; may participate in the recruitment of volunteers, as appropriate to the area of operation [2%];
- Represent the department at business and community meetings; may conduct tours and/or give presentations [3%]; and
- Coordinate public outreach programs and commencement activities [3%].

Beginning with the first bulleted task, the record raises more questions than it answers about the nature of the Petitioner's business. The first task states that the Beneficiary would plan and direct public relations programs "for the employer or client." The Petitioner states that it "is currently managing [the] [REDACTED] and in the future, it will manage [REDACTED]. The record contains a "Real Estate Consulting Agreement" (RECA) between the Petitioner and the [REDACTED]. The RECA is a general agreement for the Petitioner to "provide the . . . services [of] commercial real estate investment consultant, referral, contact service, facility managing and facility rental service." The record also contains several documents that indicate the performing arts center's address is identical to the Petitioner's address listed on the petition and appeal. On the petition, the Petitioner stated that, although the Beneficiary would work at that identical address, he would not work at another organization's location. This information raises questions about whether the Petitioner actually owns the performing arts center at which the Beneficiary would work and, if so, why it executed the RECA with itself. If the performing arts center is an entity distinct from the Petitioner, then we question why the record does not contain documentation such as a master service agreement through which the client contracted the Petitioner to provide the Beneficiary as a "public relations specialist."

The record also contains a "Human Resource Management Contractor Agreement" (HRMCA) between the Petitioner and an entity identified as "CAPEC, LLC." The HRMCA is a general agreement for the Petitioner to perform the duties of "1) Recruitment management, includes hire and layout employee[;] 2) Salary management, includes employee time card record and paycheck[;] 3) Training management, includes new employee work training[;] 4) Recruitment [b]udget management, includes budgeting all the cost of recruitment[; and] 5) Employee [b]enefit management, includes [h]andbook, bonus, holidays and insurance." The HRMCA does not provide a location at which the Petitioner would provide those services. Moreover, the California Secretary of State reports that there is no limited liability company (LLC) containing the term "CAPEC" registered to do business in that state and, although there was an LLC containing the term "CEPAC," it dissolved in February 2017, two months before the Petitioner filed the petition.⁴ The address for

⁴ The record also contains rental agreements between third parties and an entity "hereinafter referred to as 'CEPAC'" to use locations at the performing arts center's address identified as "Auditorium" or "Main Hall" during 2016 and 2017. The rental agreements do not reference the Petitioner, although the Petitioner's CEO signed many of them, identifying himself as the "CEPAC Manager." The most recent rental agreement, executed prior to the petition filing date, indicates the third party was authorized to use the premises in April 2017. Regardless of whether the performing arts center is actually owned by the Petitioner, the record does not establish that the performing arts center has rented its space to a third party since the petition filing date. Accordingly, the record does not establish the need for the services described in

that dissolved company was identical to the address of the Petitioner and the performing arts center. Because CAPEC, LLC does not appear to exist in the state of California, we question the probative value of the HRMCA. Moreover, in addition to questions already raised regarding whether the Petitioner executed the RECA with itself, the HRMCA raises questions regarding whether the Petitioner executed it with a non-existent entity. The record does not contain documentary evidence, such as a master service agreement and a corresponding statement of work, to establish a contractual relationship between the Petitioner and any other client.⁵

The Petitioner's response to the Director's request for evidence (RFE) further confuses the nature of the Petitioner's business and any clients it may have. In response to the Director's RFE, the Petitioner submitted a development proposal for the [REDACTED]

[REDACTED] Although the proposal does not specify the address for the development, it includes aerial photographs of a group of buildings that match similar photographs in the record attributed to the address of the Petitioner and the performing arts center. The undated proposal identifies the Petitioner as a "Pre-School Academy" with 226 students.⁶ The proposal further states that the Petitioner's "mission is to provide top level child care. Our services will include infant daycare, toddler daycare and after-school programs" Therefore, even if the record established whether, at the time of filing the petition, the Petitioner was actually a property investment and management company or the performing arts center located at the identical address, the record would not establish whether the Petitioner would continue as such or instead become a distinctly different preschool academy.⁷ The vagueness of the proposed duties, discussed below, is particularly problematic in light of the confusion created in the record regarding the nature of the Petitioner's business.

Returning to the duty description, we observe that at least nine of the 22 bulleted items, assigned a total of 45% of the Beneficiary's time to perform, reiterate the same general task of writing, producing, and distributing marketing and promotional materials, in print or various electronic formats. The tasks refer to "the employer or client," "company literature," "products and services," "customer references," and "the organization's point of view." The duty description does not specify which client; which company's (the Petitioner, the performing arts center, a renter using the performing arts center, or a residential and retail complex) literature; whose products and services

the RECA during the requested validity period.

⁵ The record also contains an independent contractor agreement (ICA) between the performing arts center and an individual whose duties the agreement describes as "(1) Construction cleaning/janitorial [and] (2) Door closing/opening service." The ICA does not reference the Petitioner, the Beneficiary, or the proffered public relations specialist position. Therefore, the ICA bears minimal probative value.

⁶ The development proposal identifies other existing buildings at the identical address of the Petitioner and the performing arts center as an "Education Center" and "Media Production & Events Center," each with distinct names: [REDACTED] and [REDACTED] respectively. The proposal plans to build a new structure identified as [REDACTED] Classroom/Academic Building," for 1,200 students, distinct from the preschool academy identified with the Petitioner's name.

⁷ Even if the preschool academy bearing a name matching the Petitioner would be a distinct entity, the record also does not establish whether the Petitioner would manage the real estate at the address on the petition after the development plan is complete and, if not, where the Beneficiary would work.

(e.g. managing another entity's real estate, operating a performing arts center, the products or services of a renter using the performing arts center, or the products or services of a residential and retail complex); which customer's (the performing arts center, a renter using the performing arts center, a residential and retail complex, or another customer) references; and which organization's (the Petitioner, the performing arts center, a renter using the performing arts center, or a residential and retail complex) point of view. The remainder of the duty description contains similarly vague language. Moreover, as discussed above, the record confuses more than clarifies whether the Petitioner is a real estate management company, a performing arts center located at the same address, or a preschool academy, which raises questions about what, exactly, the Beneficiary would promote.

Furthermore, regardless of whether the ultimate client is the performing arts center, a renter using the performing arts center (in which case the performing arts center would be a mid-vendor), or a residential and retail complex, the record does not contain a description of the proffered position's duties from a client. Where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. *Defensor*, 201 F.3d at 387-88.

The inconsistencies, discrepancies, and lack of clarity discussed above raise significant questions regarding what the Beneficiary would actually do if this petition were approved. Accordingly, there is insufficient evidence to establish the substantive nature of the work to be performed by the Beneficiary, which therefore precludes a conclusion that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Additionally, even if the record established the substantive nature of the proffered position's duties, a public relations specialist generally does not qualify as a specialty occupation. The subchapter of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* titled "How to Become a Public Relations Specialist" states, in relevant part, that "[p]ublic relations specialists typically need a bachelor's degree in public relations, journalism, communications, English, or business."⁸ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Public Relations Specialists, <https://www.bls.gov/ooh/media-and-communication/public-relations-specialists.htm>

⁸ We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. However, we do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses.

Matter of C-B, LLC

#tab-4 (last visited Nov. 14, 2018). The qualifying degrees include disparate fields of study, such as English and business. Therefore, the *Handbook* does not establish that the knowledge required to perform a typical public relations specialist's duties is usually associated with the attainment of a bachelor's or higher degree *in a specific specialty*, or its equivalent.

III. CONCLUSION

The Petitioner has not demonstrated eligibility for the benefit sought.

ORDER: The appeal is dismissed.

Cite as *Matter of C-B, LLC*, ID# 1531295 (AAO Nov. 14, 2018)