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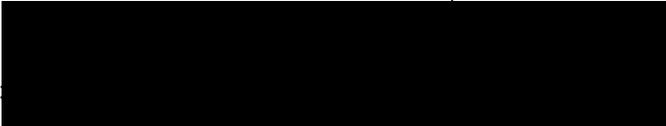


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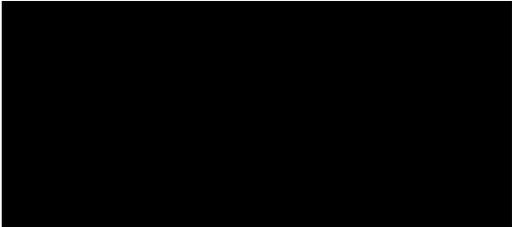
Date: JUN 09 2004

IN RE: Petitioner:  
Beneficiary



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is non-profit education reform association that engages in fundraising for the [REDACTED] an alternative school managed by the [REDACTED]. In order to employ the beneficiary as a development assistant, the petitioner 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 on the basis that the petitioner had not established that the proffered position was a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A). A key element of the director's decision was his determination that the majority of the proposed duties are of an administrative assistance and clerical nature. In urging that the director's decision was erroneous, arbitrary and capricious, and not based on the weight of the evidence, counsel maintains that the evidence clearly establishes that the petitioner has proffered a public relations position which requires a bachelor's degree.

In reaching its decision, the AAO considered the entire record of proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B as annotated by counsel and counsel's brief.

Upon review and consideration of all of the evidence of record, including all the submissions by counsel and the petitioner from the filing of the Form I-129 through this appeal, the AAO has determined that the director's decision to deny the petition was correct. The record does not present an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The job description document in the record described the [REDACTED] as follows:

- ❖ Assist with management of acknowledgement and correspondence tracking
- ❖ Assist with management of individual donor tracking and information
- ❖ Assist with newsletter and other periodic mass mailings
- ❖ Identify and research potential sources of funding
- ❖ Assist in mass appeal efforts
- ❖ Help plan and manage logistics of special events (e.g., gift drives, funder meetings, curriculum presentations)

- ❖ Special projects as requested
- ❖ General office support as needed to include answering phones, filing, and mail

The job description document also noted that the petitioner is a non-profit fundraising organization and that the position's incumbent would report to a person who is both a [REDACTED]

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)(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.

Citizenship and Immigration Services (CIS) 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. This fact deserves emphasis because it is a decisive factor in both the director's decision and this AAO decision that affirms the director's action, and because counsel appears to contend, erroneously, that the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A) refer to any college degree, regardless of whether it is in a specific specialty.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) is satisfied where the evidence establishes that a baccalaureate or higher degree, or the equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position. The evidence of record here does not reach this threshold.

In light of the fundraising and communication activities that are at its core, the petitioner's business can be fairly characterized as public relations. The fact that the beneficiary would be working in a public relations business, however, does not establish that she would be working in a specialty occupation, even if counsel is correct in characterizing her position as "public relations specialist." The AAO has long recognized the [REDACTED] as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO gave great deference to the copy of the *Handbook* section on public relations specialists, which counsel submitted into the record.

The *Handbook's* information on the public relations specialist occupation states that there are "no defined standards for entry into a public relations," however, and it indicates that employers have not established a requirement for a specific specialty degree as a hiring norm for public relations specialists.

Furthermore, the record's descriptions of the proposed duties are so generally worded and so heavily-weighted towards the assistance function that they do not convey that the beneficiary would be working as more than an administrative assistant as described in the *Handbook*. The *Handbook* also reports the administrative assistance occupation as not requiring a bachelor's degree or the equivalent in a specific specialty.

The Internet job vacancy advertisements in the record are not indicative that a bachelor's degree, or the equivalent, in a specific specialty is the normal minimum requirement for the position at hand. One of the advertisements only states a college degree as a preference, not a requirement; and none of the advertisements require a degree in a specific specialty.

As the evidence of record does not establish that the proffered position is one that normally requires at least a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner has not presented evidence that would qualify the proffered position under either of the two alternative prongs of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

The record contains no evidence to satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) by establishing that a specific-specialty degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by CIS 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 degree individuals." [REDACTED]

As already discussed, the *Handbook* does not report that the proffered position is one that requires a degree in a specific specialty. Also, there are no submissions from individuals or other firms involved in the hiring of development assistants. The record's three Internet job vacancy announcements from other firms seeking

development assistants also do not satisfy this prong's requirement. These documents are too few to establish an industry-wide hiring requirement. Furthermore, none of them insists that candidates have a degree in a specific specialty.

The AAO also found that the evidence of record does not qualify the proffered position under the second 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 general information which the record contains about the proposed position does not show such complexity or uniqueness as to require a bachelor's or higher degree in a specific specialty.

The petitioner provided no evidence to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are described in the record, the duties are no more specialized and complex than those of a public relations specialist, a position for which the *Handbook* reports no requirement for a baccalaureate or higher degree, either generalized or in a specific specialty.

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

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.