



U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 02 179 54045 Office: NEBRASKA SERVICE CENTER

Date: FEB 06 2004

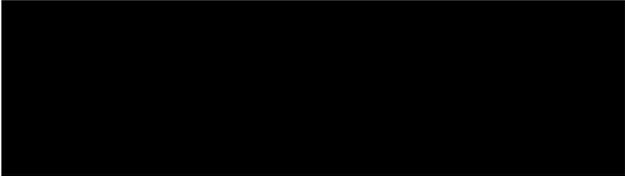
IN RE: Petitioner:  
Beneficiary:



**PUBLIC COPY**

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

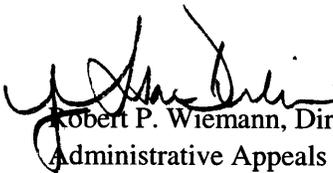
ON BEHALF OF PETITIONER:



Identifying data deleted to  
prevent disclosure of information  
invasion of personal privacy

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.

  
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 a Catholic church that seeks to employ the beneficiary as its Spanish Youth Ministry Coordinator. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as its Spanish Youth Ministry Coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 23, 2002 letter in support of the

petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties, in collaboration with the pastor and other church staff members, that entail: developing and implementing opportunities for Spanish-speaking youth (grades 7 to 12) and young adults to have faith-based experiences; participating in the planning, implementation, and evaluation of parish goals, with specific focus on the Hispanic youth ministry; developing educational and religious programs and activities for junior and senior high youth including religious education, retreats, outreach programs, youth-oriented liturgies, social events, and community service; coordinating sacramental preparation for youth; and recruiting and training leaders to assist in the youth programs. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in education.

The director found that the proffered position was not a specialty occupation because the job does not require a baccalaureate degree in a specific specialty. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel indicates that the proposed duties, which include preparing and teaching classes and workshops, are so specialized and complex that a baccalaureate degree in education is required. According to counsel, the proffered position is a "Job Zone 5" occupation (referring to the Department of Labor's *O\*Net*), which requires a degree. Counsel also states that the petitioner's other youth minister holds a bachelor's degree in religious education. Finally, counsel states, in part, that the position should be considered a specialty occupation because the record contains several job postings from similar organizations for parallel positions requiring a baccalaureate degree in a specific specialty.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first 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; 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 often considered by CIS when determining these criteria 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the Religious Activities and Education Director in the *Handbook*, 2002-2003 edition, does not indicate that a baccalaureate or higher degree, or its equivalent, in a specific specialty is required for a religious activities and education director.

Counsel's reference to and assertions about the relevance of information from *O\*Net* is not persuasive. The Job Zone category does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. A Job

Zone category is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for youth ministry related positions. Many of the postings, however, do not specify a degree in specific specialty. Some of the postings specify a baccalaureate degree or higher in religious education. In this case, the beneficiary does not hold a baccalaureate degree in religious education. Furthermore, other postings do not specify that any degree is required. Still others indicate that a degree is preferred rather than required. Thus, the advertisements do not demonstrate that a baccalaureate degree in a specific specialty is required throughout the industry.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to 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. On appeal, counsel states that the petitioner's only other individual serving in a parallel position holds a degree in religious education. According to the I-129 petition, the petitioner was established in 1886. To demonstrate that it normally requires a baccalaureate degree in a specific specialty for employment in the proffered position, the petitioner would need to document the credentials of all its youth ministry coordinators, not just the one person who is currently employed by the petitioner. Without documentary evidence, the petitioner will not meet its burden or proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion 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 the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, 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.