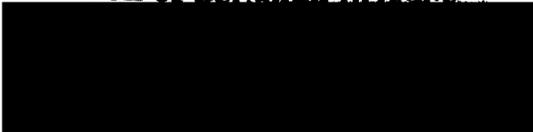




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U.S. Department of Justice  
Immigration and Naturalization Service

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



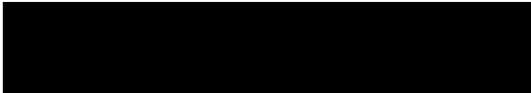
OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: LIN-00-001-52006

Office: Nebraska Service Center

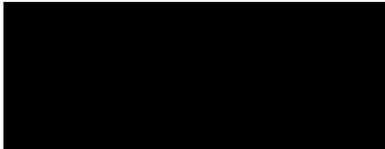
Date: OCT 01 2002

IN RE: Petitioner:  
Beneficiary:



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)

IN BEHALF OF PETITIONER:



**PUBLIC COPY**

**INSTRUCTIONS:**

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director. On appeal, the Associate Commissioner for Examinations determined that the petitioner had failed to submit additional evidence to overcome the decision of the director, and rendered a decision based upon counsel's statement on Form I-290B. The Associate Commissioner for Examinations dismissed the appeal reasoning that the petitioner had not established that the proffered position is a specialty occupation. Upon receipt of additional information, it appears that counsel for the petitioner did submit additional evidence timely. Therefore, the matter will be reopened on Service motion pursuant to 8 C.F.R. 103.5(a)(5)(i).

The petitioner is a church with an undisclosed number of employees and a gross annual income of \$518,000. It seeks to employ the beneficiary as an assistant pastor for a period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On motion, counsel provides additional information.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application 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 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.

The director denied the petition because the petitioner had not demonstrated that the proffered position meets any of the criteria of a specialty occupation.

The record contains, in part, the following:

- \* Resume of an assistant pastor of a neighboring church, showing that he holds a bachelor's degree in theology;
- \* various job postings for a variety of church positions.

Counsel's additional information is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the

Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The Assistant Pastor position will be responsible for assisting the senior pastor in all aspects of Church leadership. This will include the leading of the congregation in worship, hymns and prayer; give sermons and explain doctrines of the Bible; perform baptismal, holy sacraments, wedding and funeral services; provide spiritual and moral guidance and assist members of congregation biblical [sic]; and direct educational ministries.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position of assistant pastor would normally require a bachelor's degree in theology or a related field. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 149 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a protestant minister. While many denominations require or strongly prefer a bachelor's degree followed by study at a theological seminary, some denominations have no formal educational requirements, and others ordain persons having various types of training from Bible colleges or liberal arts colleges. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although it has been established since 1988, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as theology, for the offered position. Third, the petitioner submitted one resume of an assistant pastor to demonstrate that the degree requirement is industry wide. One resume is insufficient evidence of an industry standard. The job postings submitted by counsel have also been reviewed. It is noted that some of the positions require specific theology-related degrees, others require degrees but in no specific field of study, and still others require no degree at all. The record contains no indication of the number or percentage of assistant pastors who hold degrees in a theology-related field. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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 previous decision of the Associate Commissioner dated June 27, 2001, is affirmed.