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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536

[redacted]

File: SRC 02 134 52570 Office: TEXAS SERVICE CENTER Date: AUG 18 2003

IN RE: Petitioner: [redacted]
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)

ON BEHALF OF PETITIONER:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a tax-exempt Nashville church that has seven employees and a gross annual income of $225,000. It seeks to temporarily employ the beneficiary as a ministry administrative assistant. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the position was incorrectly titled on the I-129 petition, and that it is more correctly characterized as outreach minister, which counsel states is a specialty occupation. The Bureau notes that, although counsel] indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days of filing the appeal, as of this date, the record does not contain any additional evidence. Therefore, the record is considered complete, and the AAO shall render a decision based upon the evidence before it at the present time.

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 term "specialty occupation" is defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in a field 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.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Texas Service Center on March 26, 2002, the petitioner described the duties of the proffered position as a "liaison between church and Arabic congregation in the ministry." The I-129 petition also indicated that the beneficiary's status as a B-2 visitor had expired prior to the filing.

On May 8, 2002, the director asked for further information with regard to the beneficiary's status in the United States, and to establish that the proffered position was a specialty occupation. In response, the petitioner submitted a copy of the beneficiary's passport and I-94, showing his B-2 status granted until October 10, 2001. The petitioner also submitted documents showing that the beneficiary holds a B.S. degree in education from an Egyptian university, a letter of recommendation from the pastor of the beneficiary's church in Egypt, and a statement that the proffered position requires a bachelor's degree because the duties include the education of Arabic church-goers.

On May 14, 2002, the director denied the petition. The director had no evidence that the beneficiary was in status at the time of filing the petition. The director also found that the evidence on record had not established that a bachelor's degree was a minimum requirement for the position of ministry administrative assistant, even taking into consideration the educational portion of the job duties.

On appeal, counsel asserts that the proffered position requires a bachelor's degree because the specific duties are specialized and complex. A letter from the pastor of the [redacted] lists the beneficiary's position as assistant minister and Bible teacher for the Arab congregation. According to the pastor's letter, the beneficiary would be responsible for evangelical duties, such as teaching about the Bible, teaching songs, holding prayer meetings, and ministering to children and teens. He would also arrange for activities intended to foster fellowship between American and Arabic members of the community.

Upon review of the record, the petitioner has not presented a persuasive argument for classifying the proffered position as a specialty occupation. The documentation provided does not support any of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position has not been established. The Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. On appeal, the petitioner proposes the *Handbook* classification of clergy, specifically, Protestant minister, for the proffered position. With regard to training and experience for Protestant ministers, the *Handbook* on page 149 states that educational requirements for entry into the Protestant ministry vary greatly. To the extent that a baccalaureate or higher degree or its equivalent is not required for entry into this field, the proffered position is not a specialty occupation.

The petitioner submitted no documentation to establish that the degree requirement is common to the industry in parallel positions among similar organizations, as required by 8 C.F.R. § 214.1(h)(4)(iii)(A)(2), nor has the petitioner shown that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

There is no information that the petitioner has hired individuals in the proffered position previously. Thus the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that the employer normally requires a degree or its equivalent for the position.

The petitioner has not established 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, as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Despite the fact that the beneficiary requires the use of two languages to perform the job duties, and that some of the duties are educational in nature, there is no evidence that such duties so specialized and complex that the incumbent must hold a bachelor's degree in order to perform them.

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.