

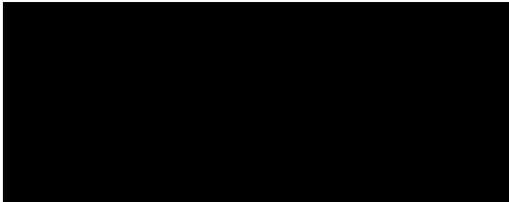
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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: LIN-02-200-53012 OFFICE: NEBRASKA SERVICE CENTER

DATE: DEC 17 2003

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:



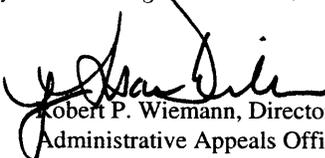
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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, Nebraska Service Center, 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 nonprofit religious institution that employs 124 persons and has a gross annual income of \$14 million. It seeks to employ the beneficiary as Vice President of International Ministries. The director denied the petition because the petitioner failed to establish that the offered position qualifies as a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the offered position qualifies as a specialty occupation.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 further 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 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.

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 letter accompanying the I-129 petition described the beneficiary's duties as directing, coordinating, and implementing a global publishing and resource strategy, and a strategic plan for an international ministry. The letter also stated that candidates for the position must possess a bachelor's degree in a business related field or its equivalent.

On June 4, 2002, the director requested the following: (1) a statement describing the specific degree required for the position; (2) evidence establishing the beneficiary's qualifications for the position; (3) a detailed description of the beneficiary's duties, indicating the percentage of time that will be spent on each duty; and (4) an itinerary describing the beneficiary's daily workload.

In response, counsel submitted a letter, dated June 10, 2002, along with affidavits from Levi Strauss & Company attesting to the beneficiary's work experience, a position profile, and a sample daily itinerary. The letter stated that candidates for the offered position must possess a bachelor's degree in business administration, management, or finance, and that the beneficiary's subordinates have similar degree requirements due to the nature and complexity of their duties.

The position profile stated that by developing strategies and plans, and building networks with pastors and denominations located overseas, the beneficiary would further the petitioner's mission: to envision, equip, and encourage church leaders around the world to build prevailing churches. The position profile reported that the beneficiary's duties would include the following:

- Developing, implementing and overseeing appropriate organizational structures ([b]oards, [a]dvisory boards, and staff) that meet ministry and legal requirement[s] in a given country.
- Developing, implementing, and overseeing annual strategies and goals in furthering the mission and vision of the WCA.
- Prepare [sic] and review legal and financial documents required to establish and sustain overseas affiliates.
- Guide [sic] and work with the leadership in a given country to ensure their commitment to the execution and achievement of these plans and goals.
- Oversee [sic] operations of overseas affiliates to ensure continued commitment to WCA mission.
- Manage [sic] and work with [e]xecutive [d]irectors of each affiliate continually to ensure execution of WCA plans and goals.
- Identify [sic] key supporters in churches, denominations and para-church organizations who will be open to partner with the WCA in carrying out of our mission.
- Assure [sic] each country operates under sound financial principles and is committed to generating funds to become less dependent on support form [sic] the WCA-US.
- Represent [sic] the requirements and requests of overseas affiliates before the relevant ministries and business teams of Willow Creek Community Church and the WCA.
- Develop [sic] a global publishing and resource strategy in support of the mission and the strategies of the WCA and each affiliate.

The position profile stated that the beneficiary's secondary responsibilities included teaching seminars, planning events, and developing volunteer teams. And, the beneficiary's daily itinerary read as follows:

1. Initiate conference calls with various affiliates around the world to discuss and develop their strategic plans, review their financials and budgets, develop board policy

and procedure[,] and direct staff development.

2. Develop job descriptions, [and] market and hire appropriate talent for positions to be filled in affiliate organizational structures. Coach the staff through interpersonal relational issues and develop skill enhancement initiatives.
3. Review progress to date of the affiliate's performance against their annual goals and objectives. Create the appropriate templates to measure and improve progress. Leverage best practice[s] across the global infrastructure.
4. Identify and initiate relationship building activity [sic] with key stakeholders within the [p]astoral and [p]ublishing community[,] in their respective markets[,] that will accomplish the vision and mission of the WCA.
5. Negotiate contractual agreements with publishers and other supply chain partners in order to publish Willow Creek resources in various languages and markets around the world.
6. Develop an appropriate network of relationships across the U.S. based organizations that will leverage performance and ministry advancement internationally. Identify new products for publishing and develop the appropriate processes and policy to get it done.
7. Participate and take the lead in senior executive leadership team meetings across various departments of the U.S. based organization as required to fulfill position's ongoing roles and responsibilities.

On June 25, 2002, the director denied the petition, finding that the petitioner failed to establish that the offered position qualified as a specialty occupation. The director found that the petitioner provides affiliated organizations with strategic vision, training, and resources; that the offered position had no real authority over the affiliates; that no staff reported to the beneficiary; and that the beneficiary's duties would be broad, encompassing expertise not associated with management or finance.

On appeal, counsel states that the petitioner established that the offered position qualifies as a specialty occupation under the regulations.

Counsel alleges that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because a baccalaureate or higher degree or its equivalent in a specific specialty - management or finance - is the minimum for entry into the offered

position. Counsel avers that the petitioner states that executive directors of its affiliates must have, at minimum, a bachelor's degree in business, and that they report to either the offered position or the executive vice president. Consequently, counsel attests that, because the beneficiary's subordinates must hold degrees, it is reasonable that their supervisor, the beneficiary, would hold a bachelor's degree, too.

Counsel's allegation is weak; the petitioner has not presented evidence to substantiate its claim that all executive directors possess bachelor's degrees or are required to possess bachelor's degrees. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Another of counsel's claims is that the petitioner satisfied the first criterion because the offered position is high-ranking within WCA, equivalent to the private sector's position of Vice President of International Operations, a position that establishes a product overseas. Counsel also states that the beneficiary's duties parallel those of the petitioner's executive vice president, and that the beneficiary will supervise at least five executive directors and will be responsible for the finance and operations of their respective affiliates.

Counsel states that the Affiliation Agreement, submitted with the appeal, clarifies the petitioner's relationship with its affiliates and the beneficiary's duties and authority. Counsel explains that paragraph three of the Agreement reads as follows:

The Board, Director[,] and staff shall be accountable to the Executive Vice President of International Affairs, or other designated representative [sic] of the WCA. Such WCA representative is hereby granted the right to review, approve and modify the Affiliate's business decision, including but not limited to, its business strategy, membership strategy, product offerings and development, conference and training plans, financial budgets, expenditures, investments and liabilities, and any other matters materially affecting the financial or business soundness of the affiliate. Accordingly, [the] Affiliate's Board, Director[,] and staff shall response [sic] regularly, promptly[,] and specifically to any inquiry from such WAC representative.

In addition, counsel states that the Affiliation Agreement states, that one board member may be a paid staff member of the WCA. According to counsel, the beneficiary would be the designated representative and counsel further states that the Board of Directors manages and directs the affairs of the organization,

including the power to remove officers.

Counsel's statements are not persuasive to prove that the petitioner has established the first criterion. Citizenship and Immigration Services (CIS) looks beyond the title of the offered position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) is instructive in that it provides a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into an occupation and advance within that occupation.

At pages 26-27 of the 2002-2003 edition of the *Handbook*, the *Handbook* reveals that the beneficiary's duties reflect those performed by marketing and sales managers. For example, the beneficiary's primary duties are to further WCA's mission, the building of a world-wide network of pastors and denominations, by: (1) overseeing and guiding the executive directors and other leaders to ensure their commitment to WCA's goals; (2) identifying key supporters in churches and other organizations who will partner with WCA; and (3) developing a global publishing and resource strategy. Secondarily, the beneficiary will ensure the financial feasibility of affiliates, and will perform personnel duties such as developing job descriptions, training and hiring personnel. Like the beneficiary, the duties of marketing managers are to develop a firm's marketing strategy, determine the demand for services, identify markets, ensure profitability, collaborate with other managers to monitor trends, and advertise and promote a firm's services to attract potential users. The duties of sales managers are also like the beneficiary's: the beneficiary ensures the financial viability of WCA's affiliates by reviewing, measuring and improving an affiliate's performance against established goals, and sales managers direct a firm's sales program, set its goals, establish training, and advise sales representatives on ways to improve their sales performance. The sales managers' sales representatives are akin to the beneficiary's executive directors' in that both are selling a service to the public.

On page 28, the *Handbook* reports that employers find a wide range of educational backgrounds are suitable for entry into marketing and sales managerial jobs, and that many employers prefer those with experience in related occupations plus a broad liberal arts background. For example, employers accept a bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable.

For marketing and sales management positions, in particular, the *Handbook* explains that some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing; it also reveals that marketing and sales management positions are usually filled by promoting experienced staff or related professional or technical personnel. Thus, the *Handbook* discloses that a bachelor's degree in a specific specialty is not required as a minimum for entry into marketing and sales manager positions. Consequently, the petitioner has not satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), showing that a baccalaureate or higher degree or its equivalent in a specific specialty is the minimum for entry into the offered position.

Next, counsel maintains that the petitioner met the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), specifically, that the degree requirement is common to the industry in parallel positions among similar organizations, or that its position is so complex or unique that it can be performed only by a person with a degree. Counsel asserts that the uniqueness and complexity of the beneficiary's duties make the attainment of a degree particularly important. Nevertheless, counsel's assertion is groundless because the petitioner has not submitted evidence to substantiate it. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the petitioner fails to establish the second criterion.

The petitioner has not submitted evidence to prove that it normally requires a degree or its equivalent for the offered position; thus, the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) has not been met.

One of counsel's assertions is that the nature of the position's 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. For instance, counsel claims that the beneficiary will ensure the financial stability and evangelical success of WCA's affiliates by negotiating, implementing, and directing their operations. Counsel compares the beneficiary to a person in the private sector who must ensure a corporation's profitability.

Counsel's statements are not persuasive. As previously discussed, the beneficiary's duties reflect those performed by marketing and sales managers. For example, marketing managers ensure an organization's financial profitability by developing a marketing strategy, identifying markets, and monitoring trends, and sales managers guide, direct, and supervise the sales representatives who sell services and products. And, as the *Handbook* discloses, marketing and sales managers do not require a bachelor's degree in a specific specialty to perform their duties. Thus, the petitioner fails to establish the fourth criterion at 8 C.F.R.

§ 214.2(h)(4)(iii)(A).

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.