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Citizenship and Immigration Services

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

[REDACTED]

File: WAC 02 239 52353 Office: CALIFORNIA SERVICE CENTER

Date: DEC 23 2003

IN RE: Petitioner [REDACTED]  
Beneficiary [REDACTED]

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]

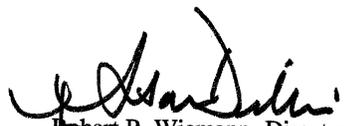
INSTRUCTIONS:

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 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 Director, California Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn. The matter will be remanded to the director for further consideration of the beneficiary's qualifications.

The petitioner is a Catholic church with an undisclosed number of employees and a gross annual income of \$1,052,383. It seeks to temporarily employ the beneficiary as a organist/choir master for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel submits five additional affidavits to establish the industry standard for the organist/choir master position.

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.

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

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in 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 California Service Center on July 23, 2002, the petitioner stated that the church served over 3,000 families and is one of the larger parishes in the Diocese of San Diego. The petitioner further stated that Mass, the main liturgical service, is held daily, with five Masses on the weekend. The petitioner also stated that Masses and other liturgical services are held on holy days of obligation, weddings, funerals, quinceaneras, baptisms, confirmations, Christmas and Easter festivities, and a whole range of other services and ceremonies. The petitioner stated that it had always employed a professional musician and the minimum requirement for employment is a bachelor's degree and membership in the American Guild of Organists. The petitioner then stated that its previous director of music had held a doctorate degree. With regard to specific duties, the petitioner stated:

[The beneficiary's] position will include total performance responsibility for the services and liturgies. . . . Furthermore, she is responsible for music librarianship, choir recruitment, liturgical planning and department head staff responsibilities. There are two choirs in this [p]arish, and they generate a large amount of work for the [m]usic [d]irector.

The petitioner added that the beneficiary's academic background was imperative so that the parish could provide quality music in its worship services according to universal church law and diocesan norms. The petitioner also added that the beneficiary had also been tasked with the recruitment and enlargement of the choirs.

On July 29, 2002, the director requested further evidence as to the job duties, such as the percentage of time to be spent on each duty, the level of responsibility, the hours per week of work, types of employees supervised and the minimum education, training and experience necessary to do the job. The director also requested information as to how the proffered position met the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, the petitioner submitted documentation from the Department of Labor (DOL) foreign labor certification website that described two occupations in music and an excerpt from another DOL website that provided the specific vocational preparation levels for music teachers and instrumental musicians. The petitioner also submitted vacancy announcements for part-time organists for two churches with memberships of 450 and 600 members. In addition the petitioner submitted staff rosters from two churches that described the academic qualifications of each church's choir director. Finally, the petitioner submitted letters from Craig Cramer, professor of music, University of Notre Dame, and from Steven Sturk, Executive Director, Pacific Academy of Ecclesiastical Music, San Diego, California. The letter from Mr. Craig stated that larger, more sophisticated parishes required degreed music directors. Mr. Sturk stated that he had served on many church organist search committees, and in all cases a bachelor's degree was considered the minimum requirement for employment. Mr. Sturk described the proffered position as a complex one in which the beneficiary acts as both organist and choirmaster at a large parish which entails hundreds of church services each year, as well as directing two choirs and professional soloists.

On August 14, 2002, the director denied the petition. The director examined the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) for musicians, singers and related workers and found that the *Handbook* did not indicate that a bachelor's degree is an industry-wide requirement for entry into the occupation. The director further stated that the petitioner failed to provide more detailed information on the job duties of the proffered position, and as a result, the director could not determine whether the musician jobs outlined in the DOL documents were similar to the proffered position. The director also stated that the church staff rosters and the two job vacancy announcements were not sufficient to establish the industry standard.

On appeal, the petitioner submits the following new materials:

Letter from Carl P. Daw, Jr. Executive Director of the Hymn Society of the United States and Canada, Boston, Massachusetts. Mr. Daw states that the beneficiary's bachelor of music degree satisfies normal industry standards for persons employed in musical leadership positions in congregations in the United States.

Letter from Professor John Fergus, Professor of Organ and Church Music, St. Olaf College. Dr. Fergus states that he had many former students serving major church congregations in the United States. According to Dr. Fergus, all have baccalaureate degrees and most have at least a master's degree. Dr. Fergus also states that larger congregations with more extensive programs (many services weekly, more than one choir, professional

singers as paid choir members) expect graduate degrees (including the doctorate) or extensive significant, professional experience in lieu of graduate study.

Letter from Professor Paul Westermeyer, Professor of Church Music, Luther Seminary, St. Paul, Minnesota. Dr. Westermeyer states that he had served as president of the Hymn Society in the United States and Canada, Chaplain of the American Guild of Organists, Director of Ecclesiastical Concerns of the Association of Lutheran Church Musicians, and Board Member of the Leadership Program for Musicians Serving Small Congregations. Dr. Westermeyer states that a bachelor's degree is the minimal industry standard for positions similar to the petitioner's.

Letter from Steven Callahan, Chancellor, Catholic Diocese of San Diego. Monsignor Callahan reminds the petitioner that the diocese has a policy of hiring only persons with appropriate professional degrees for organist of liturgical music positions.

Letter from Mary Ann Fallon, Director of the Office for Liturgy and Spirituality, Diocese of San Diego. Ms. Fallon states that, given the size of the Corpus Christi parish and the level of expertise and responsibility needed for its music program, the organist/music director hired for this position is required to have a bachelor's degree in music. Ms. Fallon lists twenty Catholic churches in the San Diego diocese who comply with this requirement.

The petitioner also submits a document entitled "Required Skill Sets Corpus Christi Catholic Parish Music Position" that breaks down the proffered position into the distinct job duties of church organist, choir conductor, and the combined organist/choir conductor duties. This document states that the position involves training two choirs, one traditional and one contemporary, as well as coaching four hired professional vocal soloists, among other duties. The petitioner also submits an annual schedule of services that identifies 250 distinct church services. In its cover letter, counsel states that the beneficiary would spend approximately 20 hours a week in performance, and an unspecified amount of time in preparation for performance.

With regard to the petitioner's reference to SVP levels for the proffered position, counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular

type of degree, if any, that a position would require. As such, DOT, and its successor, the *Occupational Information Network (O\*Net)*, are not considered a persuasive sources of information regarding whether a particular job 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.

Citizenship and Immigration Services (CIS) 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.

The basic duties of music directors as outlined in the 2002-2003 edition of the *Handbook* on page 131 are as follows:

Music directors conduct, direct, plan, and lead instrumental or vocal performances by musical groups, such as orchestras, choirs, and glee clubs. . . . Choral directors lead choirs and glee clubs sometimes working with a band or orchestra conductor. Directors audition and select singers and lead them at rehearsals and performances to achieve harmony, rhythm, tempo, shading and other desired musical effects.

The Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, states on page 132: "Music directors, composers, conductors, and arrangers need considerable related work experience or advanced training in these subjects." The phrase "these subjects" refers to coursework in musical theory, music interpretation, composition, conducting and performance in a particular instrument or voice. To the extent that the *Handbook* does not indicate that a baccalaureate degree in a specific specialty is required for entry into the organist/choir director position, it provides no conclusive information to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Without more persuasive testimony, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), factors often considered by CIS when determining the industry standard 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." *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 *Handbook's* conclusions about a degree requirement for an organist/choir director position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted seven letters from various heads of regional and national music

associations, professors of music, and diocesan officials. Of particular note are the letters from Mr. Steven Struck, Executive Director of the Pacific Academy of Ecclesiastical Music; Mr. Carl P. Daw, Jr., Executive Director of the Hymn Society of the United States and Canada, Boston, Massachusetts; and Professor Westermeyer, Luther Seminary. While all letter writers appear to have wide experience in the training of choir directors, these three specific letter writers appear to have extensive knowledge and experience in the liturgical music performance area on a regional and national level. Mr. Struck has specifically served on church organist search committees, and Professor Westermeyer has served with several liturgical music associations. All three letter writers comment on the duties of the petitioner's position and state that such a position at a minimum would require a bachelor's degree. Their opinions provide sufficient probative weight to establish an industry standard for organist/choir directors in large churches with extensive music programs.

In addition, while the director is correct in stating that the two job vacancies submitted by the petitioner for part-time organists are not sufficient to establish the industry standard, it should be noted that these two vacancies, with memberships much smaller than the petitioner, both required a bachelor's degree for entry into the position. It appears reasonable that a church with a much larger membership and an extensive variety and frequency of services would also require, at a minimum, a baccalaureate degree in a specific specialty.

The critical element in the analysis of the adjudication of this petition is not the employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> On appeal, the petitioner submits a document that lists the specific organist/choir director duties for the proffered position, and also submits advisory opinions from individuals working at a regional and national level within the liturgical music community. These materials added sufficient documentary weight to meet both the statutory requirements as outlined in the Act and the regulatory criteria as outlined in 8 C.F.R. § 214.2 (h)(4)(iii)(A). The petitioner has established that the proffered position is a specialty occupation.

Beyond the decision of the director, the evidence on the record is not persuasive that the beneficiary is qualified to perform

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *Defensor v. Meissner* 201 F.3d 388 (5<sup>th</sup> Cir. 2000).

the duties of the proffered position. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Although the petitioner has provided copies of the beneficiary's academic credentials, the petitioner provided no educational equivalency document as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). Such a document would establish the equivalency between the beneficiary's diploma in music from Brandon University, and a baccalaureate degree from an accredited U.S. institution of higher studies. Without such a document, the record is incomplete and the issue of whether the beneficiary is qualified to perform the duties of the position cannot be resolved. It is also noted that the petitioner required the beneficiary to be a member of the American Guild of Organists. The record is devoid of any documentation as to the beneficiary's membership in this association.

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 sustained that burden with regard to the issue raised by the director as to whether the proffered position is a specialty occupation. However, the record remains incomplete with regard to whether the beneficiary is qualified to perform the proffered position due to the lack of an educational equivalency document. Accordingly, the decision of the director will be withdrawn and the matter remanded to the director for further

consideration with regard to the beneficiary's qualifications.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to the director for further consideration of the beneficiary's qualifications and entry of a new decision that, if adverse to the petitioner, shall be certified to the AAO for review.