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U.S. Department of Justice

Immigration and Naturalization Service

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



File: LIN-01-235-56356

Office: Nebraska Service Center

Date: JAN 13 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: Self-represented

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a non-profit religious organization with 50 employees and a gross annual income of \$5 million. It seeks to employ the beneficiary as a youth ministry coordinator for an unspecified period. The director determined that the proffered position is not a specialty occupation.

On appeal, counsel asserts that the uniqueness of the position offered to the beneficiary should not be an impediment to its classification as a specialty occupation. In addition, counsel argues that the highly complex and specialized nature of the position, requiring a familiarity with Mexican culture and the ability to relate to the professional ministerial community as well as the Hispanic community at large, renders it a "speciality occupation."

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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 to fully perform the occupation in such 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 duties of the offered position are described as follows:

- Coordinating the efforts of local Hispanic youth workers and churches,
- Communication with organizations in Mexico and other Latin American countries,
- Translation of written materials for Hispanic youth leaders and campus clubs and for the Mexico missions program,
- Recruiting and training staff and groups,
- Assisting in the development of programs for the Hispanic community, and
- Fundraising through developing a network of supporters interested in the Hispanic community.

In these proceedings, the duties of the position are dispositive and not the job title. The Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, has no occupational listing for youth ministry coordinators. The director's decision provided a listing from the 2000-2001 edition of the Handbook relating to "human service workers and/or assistants," which was deemed to most closely approximate the position offered. However, upon examination, this occupational category from the Handbook does not appear to conform to the position under discussion.

In a special section entitled, "Data for Occupations Not Studied," the Handbook carries a listing of additional occupations. This listing includes preliminary employment projection data but omits

the more detailed information and analysis included in the main section. Among the occupations presented in this special section is an entry for "Directors, religious activities and education." The duties listed are as follows:

Direct and coordinate activities of a denominational group to meet religious needs of students. Plan, direct, or coordinate church school programs designed to promote religious education among church membership. May provide counseling and guidance relative to marital, health, financial, or religious problems.

These duties appear to be closer in scope and responsibility to those set forth in the present petition than those relating to "human service workers and/or assistants." While a bachelor's degree is indicated as the most significant source of training, there is no further requirement that the degree be in a specific specialty.

A random search of positions for religious/youth/outreach coordinators in America's Job Bank disclosed that, for most job postings of this nature, the educational requirement was generally limited to "some college," while several listings in this category required only a High School diploma or GED. There was clearly no indication of a generalized requirement of a baccalaureate degree or higher in a specific specialty for this type of position.

The petitioner has failed to submit any documentation demonstrating that a requirement of a baccalaureate degree is common to the industry in parallel positions among similar organizations or that the petitioner normally requires a degree or its equivalent for the position.

On appeal, the petitioner asserts that the position requires an individual possessing a bachelor's degree due to the fact that many of the customers he would be serving possess bachelor's and masters' degrees. However, the fact that customers with whom the beneficiary deals may or may not possess advanced degrees has no bearing on the issue of whether the beneficiary's position itself would require a baccalaureate or higher degree in a specific specialty.

In view of the foregoing, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation requiring a baccalaureate degree or higher in a specific specialty.

There are additional issues in this proceeding which were not referenced by the director in his decision of denial. On November 7, 2001, the Service sent the petitioner a Request for Evidence, indicating that the petitioner needed to submit a certification

from the Secretary of Labor that the petitioner had filed a Labor Condition Application (Form ETA 9035) certified by the Department of Labor which was valid for the dates and location of intended employment, as set forth in the regulation at 8 C.F.R. 214.2(h)(4)(i)(B)(1). However, as of this date, the petitioner has failed to provide a certified labor condition application. Without such filing, a petition may not be approved.

A further issue in this proceeding concerns the matter of dates of the beneficiary's intended employment. In Matter of Lee, 18 I&N Dec. 96 (Reg. Comm. 1981), the Commission found that a beneficiary who has been offered a position for an indefinite period with no specified termination date has not been offered a temporary position and does not qualify for nonimmigrant classification pursuant to section 101(a)(15)(H)(i). The beneficiary in the present case has been offered a position for an indefinite period with no specified dates of intended employment. As such, he is ineligible for the nonimmigrant classification sought. However, inasmuch as the appeal will be dismissed on other grounds, these issues will not be pursued further at this time.

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.