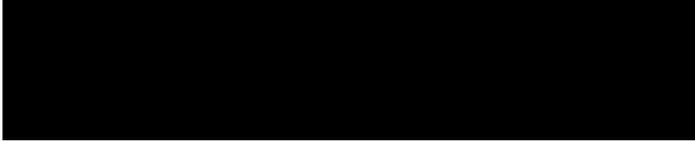


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DOA

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

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS. 3/F
Washington, D.C. 20536



JUL 31 2000

File: EAC 02 045 50566 Office: Vermont Service Center Date:

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:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Catholic Church. It has one employee and a gross annual income of approximately \$79,935. The petitioner seeks to employ the beneficiary as the Director of Religious/Musical Educational for a period of three years. The Bureau determined that the petitioner failed to establish that the proffered position was a specialty occupation.

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:

an 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.

On January 25, 2001, the Bureau requested additional evidence from the petitioner. Specifically, the Bureau requested that the petitioner provide a detailed statement setting forth the beneficiary's proposed duties and responsibilities indicating the educational requirements of the position and how the beneficiary's education relates to the position itself. In response to that request, the petitioner indicated the following:

1. The title of the position is Director of Religious and Musical Education.
2. The Director of Religious and Musical Education will be responsible for the planning, organizing, and directing of a religious education program

designed to promote religious education among congregation membership and their children. The director will plan congregational activities and projects in order to attract attention to, and encourage participation in church programs.

3. As much of the church's worship services and ancillary activities are centered around music-i.e. hymns and musical interpretations of biblical stories, the director must also have the ability to read and understand music, to compose musical interpretations and accompaniments for biblical stories, and to translate and interpret traditional Roman Catholic hymns into the Thai language, as well as adapting them to a Thai musical style.
4. The incumbent must have experience and training in educational methods, music, and the Thai-Roman Catholic religion.

Counsel states that the standard requirements for the position include a bachelor's degree in education, a background in music, and extensive knowledge of the church doctrines. An educational evaluation report was also submitted indicating that the beneficiary's foreign educational degree was equivalent to a U.S. degree of Bachelor of Science in Education awarded by a regionally accredited university in the United States. A history of the beneficiary's prior experience indicates that she has over 20 years experience in church music, teaching and activities. She has taught chorus and piano professionally as well as write piano lessons and theory plans for music students. The applicant also taught computer skills to students and teachers.

On appeal from the director's decision, the petitioner further details the beneficiary's job responsibilities. The responsibilities do not change the character of the position offered but simply explain, in greater detail, the beneficiary's responsibilities as follows:

- The director is responsible for instructing the congregates and their children in playing piano, guitar and other musical instruments;
- Responsible for directing recitals;
- Conducts the choir and musicians;
- Selects music suitable for religious services;
- Responsible for incorporating religious education into all aspects of her duties;
- Responsible for developing an English Sunday School curriculum and translating it into the Thai language;

- Responsible for meeting with church officials and educators, setting a curriculum for children, adolescents and adults, then implementing the program;
- Direct[s] the youth music ministry with concentration in Thai and contemporary music education;
- Produce[s] bilingual Thai and English worship songs for worship services;
- Conduct[s] annual musical concerts;
- Develop[s] a plan for a child care center with a teaching plan for music education;

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 qualified the offered position as a specialty occupation. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 595, the Department Of Labor states that Directors of religious activities and education "direct and coordinate activities of a denominational group to meet religious needs of students. [They] plan, direct, or coordinate church school programs designed to promote religious education among church membership." The *Handbook* further notes that the most significant source of training for this position is a bachelor's degree.

There is no indication in the record as to what percentage of the beneficiary's time would be allocated to educational activities, such as developing a Sunday school curriculum, versus the duties of a choir director, or general administrative responsibilities. The petitioner is a small church with one other employee, and the beneficiary's responsibilities are diverse. It is not possible to

conclude from the record, therefore, that the majority of those responsibilities are associated with a specialty occupation. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2 (h) (4) (iii) (A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position.

Second, 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 for the offered position. Third, the petitioner failed to present any evidence to establish that parallel positions among similar organizations in the industry commonly require a bachelor's degree or its equivalent, or that the subject position is so complex or unique that it could be performed only by an individual with a bachelor's degree. 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 those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is therefore 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.