

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

File: LIN 01 244 51804

Office: NEBRASKA SERVICE CENTER

Date:

JUN 03 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)

ON BEHALF OF PETITIONER:

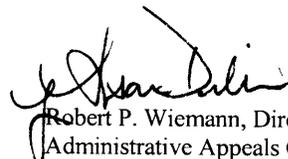
INSTRUCTIONS:

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 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, Nebraska Service Center, and is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be dismissed.

The petitioner is a church with three employees. It seeks to employ the beneficiary as a choir conductor for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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.

At issue in this proceeding is whether the petitioner has shown that the proffered position qualifies as a specialty occupation.

The director denied the petition because the petitioner had not established that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation or that the duties of the position are so specialized and complex

that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the petitioner requires a baccalaureate degree in a specific specialty for the proffered position and that the degree requirement is common to the industry in parallel positions among similar organizations.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Directs group at church rehearsals and coordinate[s] church choir to achieve desired effects, such as tonal and harmonic balance dynamics, rhythm, and tempo. Selects vocal, instrumental, and recorded music suitable to type of church service requirements to accommodate ability of group. Issues assignments and reviews work of staff in such areas as scoring, arranging, and copying music, lyric and vocal coaching; Positions members within group to obtain balance among instrumental sections; Auditions and selects vocal and instrumental groups for church services; Transcribes musical compositions and melodic lines to adapt them to or create particular style for the church community.

The director found the petitioner's initial evidence insufficient to demonstrate that the proffered position is a specialty occupation and issued a notice requesting that the petitioner submit additional evidence in support of the petition.

In response to the notice, the petitioner provided the following, expanded description of the job's duties and the percentage of the beneficiary's time to be spend on each:

- Select and plan music for Sunday and midweek service (15%) [;]

- Participate in the creative planning of the Sunday and special services with the Senior Pastor and Director of Programming Ministry (10%) [;]
- Oversee implementation of new Community services (5%) [;]
- Direct and foster the development of ensemble groups, youth choir, children's choir, and youth/adult instrumental groups (10%) [;]
- Recruit, equip, motivate, supervise and shepherd music team leaders and musicians (25%) [;]
- Develop musical team and ensembles for services (10%) [;]
- Direct outreach events into the community via performances at other organizations as appropriate (10%) [;]
- Maintain a strong prayer base for the music ministry (5%) [;]
- Communicate faithfully with the Senior Pastor and staff (2.5%) [;]
- Participate in the life and ministry of the church (7.5%) [;]

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 met any of the above requirements to classify the offered position as a specialty occupation.

The Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in music or a related field. The duties of the proffered position appear to be those of a music director, as listed under the heading of "Musicians, Singers, and Related Workers" at pages 131-133 of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. In noting the educational requirements for musicians, including music directors, the DOL states the following at page 132 of the *Handbook*:

Musicians need extensive and prolonged training to acquire the necessary skill, knowledge, and ability to interpret music. . . . Formal training may be obtained through private study with an accomplished musician, in a college or university music program, or in a music conservatory. . . . Courses typically include musical theory, music interpretation, composition, conducting, and performance in their particular instrument or voice. Music directors, composers, conductors, and arrangers need considerable related work experience or advanced training in these subjects.

Clearly, this excerpt from the *Handbook* demonstrates that an individual may gain the education and experience needed to be a musician by a variety of means without necessarily completing formal academic programs.

Counsel asserts that the *Handbook* supports a finding that a bachelor's degree in music is the normal minimum requirement for employment as a choir director. In support of his assertion,

counsel cites the following statement from the *Handbook*, 2000-2001 edition:

A master's or doctoral degree is usually required to teach advanced music courses in colleges and universities; a bachelor's degree may be sufficient to teach basic courses.

This statement has no relevance to the position in question because it refers to the normal minimum requirement for teaching positions in colleges and universities rather than to the normal minimum requirement for choir conductor positions in private churches.

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the *DOT* is not considered to be a persuasive source 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.

The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The *Handbook* provides a more 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. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

On appeal, counsel asserts that the occupation of choir director qualifies as a specialty occupation. In support of his assertion, counsel cites the holding reached in *Full Gospel Portland Church v. Thornburgh*, 730 F. Supp. 441 (D.D.C. 1998). The duties of this position, however, differ from those in the cited case. In that case, the beneficiary performed the duties of accompanist, choir director and piano teacher. In this case, the proffered position's duties are limited solely to those of a choir director. It has not

been shown that the more limited scope of this beneficiary's duties warrants comparison to those enumerated in the cited case.

Counsel further asserts that the AAO has previously issued numerous decisions in which it was found that choir director positions qualified as specialty occupations. This record of proceeding, however, does not contain copies of the previous petitions and their supporting documentation. In the absence of all of the corroborating evidence contained in those records of proceeding, the AAO is unable to determine whether those petitions were approved in error.

Each petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the Bureau is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approvals were granted in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of those petitions would have been erroneous. The Bureau is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither the Bureau nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied*, 485 U.S. 1008 (1988).

In an attempt to show that the degree requirement is common to the industry in parallel positions among similar organizations, counsel submits seven Internet job advertisements for music director jobs at various United Methodist churches from the website <http://www.umc.org/interchange/jobs/music>. The two advertisements highlighted by counsel indicate that a bachelor's degree in music or a related field is required for the position. However, two selected job advertisements are not sufficient to demonstrate an industry standard. Indeed, none of the other churches specify that a bachelor's degree in music is required for the position. Two churches state that a bachelor's degree in music or equivalent experience is preferred, and two do not indicate any specific educational requirement for the job. In view of the foregoing, it is concluded the petitioner has not submitted

sufficient evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

Additionally, the petitioner has not shown that it required a baccalaureate degree in a specific specialty as part of the hiring process for the proffered position.

Finally, the petitioner has not demonstrated that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

On appeal, counsel asserts that the Bureau applied a broad standard in determining that the proffered position does not qualify as a specialty occupation. In support of his assertion, counsel cites the holding reached in *Unico American Corp. v. Watson*, CV No. 896958 (C.D. Cal. Mar. 19, 1991). The proffered position at issue in *Unico*, however, was that of a computer programmer, whereas the position at issue in this proceeding is that of a choir director. Counsel has not demonstrated that the facts and issues in the cited decision are relevant to those in this proceeding.

The petitioner has failed to establish that any of the four factors 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.

ORDER: The appeal is dismissed.