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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

[REDACTED]

File: LIN-02-006-52086 Office: NEBRASKA SERVICE CENTER Date: **MAY 29 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 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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner specializes in the design of special parts, preventive maintenance, and testing and major repair on all types of manufactured equipment. It has 15 employees and a gross annual income of \$1,500,000. It seeks to employ the beneficiary as a clergyman/director of religious activities 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 additional evidence.

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 in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

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 director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel submits a document indicating that the beneficiary graduated from the School of Theology at Ankara University in Turkey. Counsel also submits a letter from a professor from the Department of Islamic Theology of Marmara University in Istanbul, Turkey, who states, in part that the beneficiary is qualified to be an "Imam" or Islamic scholar.

Counsel's additional evidence on appeal is not persuasive. The Bureau does not use a title, by itself, when determining whether

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

[The beneficiary] will function in the specialty occupation of Clergyman and Director of Religious Activities, utilizing his academic and practical skills in Islamic law and utterance. He will conduct religious worship and perform other spiritual functions in accordance with the teachings of Islam and will interpret Islamic doctrine and prepare and give sermons and other talks before, during and after the regular work hours of the employees of Lynwood Machine. In addition, he will provide spiritual and moral guidance to the employees and their families and will counsel those in spiritual need relative to marital, health, financial and religious problems. He will prepare and publish a weekly religious article for the benefit of the employees and their families and will promote interfaith understanding at community functions, representing the Lynwood Machine Mosque.

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.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree or higher in theology or a related field. The proffered position is that of a clergyman/director of religious activities. A review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 148, finds that educational requirements for entry into the clergy vary greatly. The *Handbook* does not specifically address "Imams." The website, Australian Federation of Islamic Counsels at <http://www.afic.com.au/apislam.htm>, however, does address the requirements of an Imam, and states, in part, as follows:

The leader of a Mosque is known as the "Imam" who is usually chosen by the congregation and the community leaders to conduct formal services and to provide religious, social and welfare guidance to the congregation. There is no formal priesthood in Islam and in the absence of an Imam, religious services can be conducted by any knowledgeable person from amongst the congregation.

In view of the foregoing, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as theology, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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 the duties is usually associated with the attainment of a baccalaureate or higher degree.

The record contains a statement from the president of the Infinite Hope Foundation who states, in part, that the minimum requirement of an Imam is a baccalaureate degree or higher in theology. The writer, however, has not provided evidence in support of his assertion. Nor has he indicated the number or percentage of Imams who hold such degrees. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of

proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record also contains a statement from a professor from the Department of Islamic Theology of Marmara University in Istanbul, Turkey, who states, in part, that the beneficiary's bachelor's and master's degrees in Islamic studies qualify him for an Imam position. The writer, however, does not state nor provide any evidence that such degrees are required for an Imam position.

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.