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U.S. Citizenship
and Immigration
Services

DZ

NOV 30 2004

FILE: SRC 03 246 55171 Office: TEXAS SERVICE CENTER Date:

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a church that seeks to employ the beneficiary as its director of education. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of 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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as its director of education. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 5, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would

perform duties that entail: directing and coordinating activities, ministries, and programs to meet religious and educational needs; planning, directing, and coordinating church educational programs; developing education-based ministries to reach out to non-members and provide counseling and guidance; developing, organizing, and directing the core curriculum for Sunday school classes; supervising member teachers and staff in the education programs and classes; promoting student participation in extracurricular congregational activities; soliciting financial support, participation, and interest in the church and the education ministry from congregation members, organizations, the community, and other donors; preparing the education portion of the monthly newsletter for financial supporters; and reviewing, analyzing, and monitoring the educational ministry budget. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in education or a related field.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director's decision is erroneous in light of the considerable evidence. According to counsel, the petitioner has satisfied three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that a baccalaureate degree is normally the minimum requirement for entry into the position, which, in this case, is similar to an instructional coordinator position, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. Counsel states further that the *Dictionary of Occupational Titles (DOT)* assigns a "Director, Religious Education" position an SVP rating of 8, signifying that five to ten years of specific vocational preparation are required for the position. Counsel also states that the DOL's *O*Net* clearly states that a bachelor's degree is required for this occupation. Counsel additionally states that the degree requirement is common to the industry in parallel positions, among similar organizations, and that the specific duties are so specialized and complex that they can be performed only by a person with a bachelor's degree. Accordingly, the AAO will address these three criteria only.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria 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." See *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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of an instructional coordinator, as described in the *Handbook*, 2004-2005 edition. None of the beneficiary's job duties entails the level of responsibility of an instructional coordinator, whose duties include developing instructional materials, training teachers, and assessing educational programs in terms of quality and adherence to regulations and standards. In this case, the petitioner is a church with two employees. Although the petitioner's September 5, 2003 letter indicates that the church "had a gross annual income of more than \$150,000 in its first year and has specifically budgeted for certain positions", the petitioner provided no documentation in support of this claim. In addition, nowhere in the record is there any evidence that the petitioner has an educational program that would

require a director of education. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, information from the petitioner's website at <http://www.catvdallas.com> reveals that the petitioner held its first service on September 17, 2004, more than a year after the petitioner's September 5, 2003 letter, in which the petitioner was described as a "ministry with [a] growing church membership." The description of the petitioner in its September 5, 2003 letter suggests that it was already holding services. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Counsel's reference to and assertions about the relevance of information from *O*Net* and the *DOT* are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for education directors. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Furthermore, there is no evidence to show that the proposed duties of the proffered position are as complex as the duties described in the advertised positions. For example, one of the positions is that of a director of education for a church with over 10,000 members, whose duties include serving as the chief officer of the education department and, through subordinate managers, planning, organizing, staffing, and directing the activities of the educational curriculum and program design for all of The Potter's House's educational departments. Another position is that of a minister of discipleship and education for a church with approximately 5,000 members, whose duties entail planning and implementing "an effective Baccalaureate program for all graduates on Education Sunday." As the positions described in the advertisements are not similar to the proffered position, they have no relevance.

The record also contains four letters from individuals familiar with the requirements of education directors. All state that the minimum requirement for an education director is a bachelor's degree in education or a related field. In this case, however, the issue is not that the job of an education director is not a specialty occupation. Rather, the petitioner has not demonstrated that the proffered position is an education director and, therefore, it does not require a baccalaureate degree, or its equivalent, in a specific specialty.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.