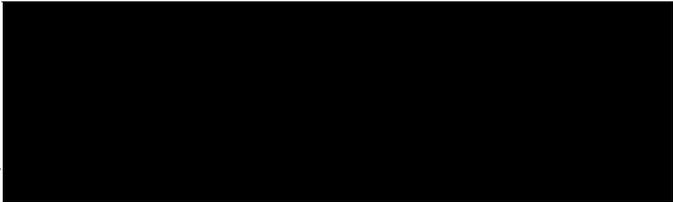




U.S. Citizenship  
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Services

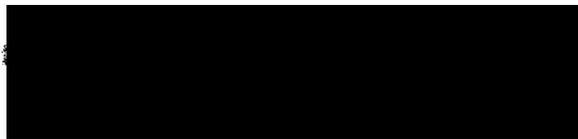
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FILE: EAC 03 063 53962 Office: VERMONT SERVICE CENTER

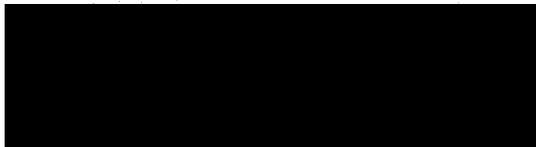
Date: SEP 01 2004

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

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**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 a minister of missions and evangelism. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel states that the beneficiary has the equivalent of a bachelor's degree in theology based on his previous university studies, and previous experience in theological and religious work. Counsel resubmits documentary evidence.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence, dated January 3, 2003; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (6) 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 a minister of missions and evangelism. The petitioner indicated that a candidate for the position would possess a baccalaureate degree or its equivalent in theology for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary is qualified for the position because he has the equivalent of a bachelor's degree in theology, based on his university studies in India in commerce, and also his four years of bible studies at two Bible colleges. With regard to the beneficiary's degree in commerce, counsel states that at least two years of this training in areas such as writing and communication would apply toward a bachelor's degree in theology. Counsel also states that the beneficiary's experience in theological and religious work would compensate for any shortcomings in the four years of study required to earn an undergraduate degree in Bible and theology. Counsel further asserts that while much of the beneficiary's work experience in churches was before his ordination as a minister in 2001, the beneficiary had served as an ordained minister for over a year at the time the H-1B petition was filed.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in theology. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized

training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In its original petition, the petitioner submitted copies of the beneficiary's coursework and of his diploma from Nagarjuna University in India. The petitioner also submitted copies of diplomas and coursework for two years of studies at Faith Bible College in New Zealand, and New Faith Bible College in Tennessee. However, the petitioner did not submit an educational equivalency document to evaluate the equivalency of his foreign studies in India and New Zealand to a baccalaureate degree in theology from an accredited U.S. educational institution. Nor did the petitioner submit an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and (3).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

Upon review of the record, with regard to the beneficiary's studies at the Nagarjuna University, he appears to have received a diploma from a three-year program in commerce. His coursework is listed as follows:

First Year: English, Hindi, economics, accountancy, and commercial geography.

Second Year: English, Hindi, accountancy, business administration/business organization, banking (theory and practice).

Third Year: advanced accounting, auditing, mercantile law, statistics, with an elective in costing and income tax.

Although counsel states that at least two years of these Nagarjuna University studies could be applied toward a bachelor's degree in theology, the documentation with regard to the coursework does not provide sufficient information to establish counsel's assertion. The assertions of counsel do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). *Matter of Obaigbena*, 19 I&N Dec. 534 (BIA 1988). In addition, as stated previously, there is no educational equivalency document in the record to establish the equivalency of the beneficiary's studies in New Zealand to a baccalaureate degree in theology from an accredited U.S. educational institution.

The record is also not clear as to whether the beneficiary's bible college studies in the United States are the equivalent of undergraduate university studies. A letter in the record from Dr. J.D. Craig, Norvel Hayes Ministries, stated that the beneficiary was trained by Norvel Hayes Ministries/New Life Bible College in church government positions, theological studies, and road equipment manager for Dr. Norvel Hayes. Neither this letter nor the transcript of courses from New Life Bible College is sufficient to establish the equivalency of these U.S. studies to baccalaureate level studies in theology. The transcript of courses taken over a period of two years primarily identifies a series of tests as the beneficiary's coursework.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The petitioner submitted three letters from ministers in various Christian churches in India that outlined the beneficiary's work experiences with these churches. The beneficiary's work duties were described as "religious worker," "Christian volunteer," "bible teacher," "associate pastor," "youth pastor," and "Sunday school teacher." As correctly stated by the director, the beneficiary's duties in most of these positions appear subordinate to the duties of the proffered position and do not necessarily reflect work equivalent to the level of work done by individuals with baccalaureate degrees in a specific specialty. Furthermore, none of these ministers indicated that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Finally, there is insufficient evidence that the beneficiary has recognition of expertise. Without more persuasive evidence, the petitioner has not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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

Beyond the decision of the director, the petitioner did not establish that the proffered position is a specialty occupation. 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 2004-2005 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* states the following for the academic credentials and requisite training for clergy:

Educational requirements for entry into the clergy vary greatly. Similar to other professional occupations, about 3 out of 4 members of the clergy have completed at least a bachelor's degree. Many denominations require that clergy complete a bachelor's degree and a graduate-level program of theological study; others will admit anyone who has been "called" to the vocation.

Thus, the *Handbook* does not indicate that a baccalaureate degree in a specific specialty is required for entry into the proffered position. In addition, the petitioner did not establish any of the other three criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). For this additional reason, the petition may not be approved.

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.