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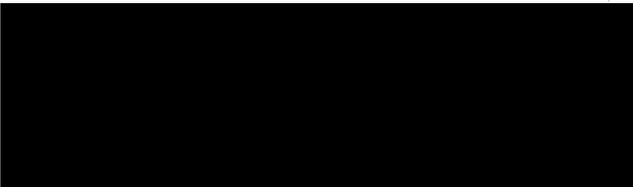


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: APR 11 2005

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 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.

*Michael T. Kelly*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the Nebraska Service Center 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 Korean American Protestant church. It seeks to hire the beneficiary as a missionary to disabled Korean Americans. The director denied the petition because he determined that the beneficiary did not qualify to perform services in a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) the Form I-290B, with a statement from counsel. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the beneficiary is qualified to perform the duties of the proffered position. In determining whether an alien is qualified to perform the duties of a specialty occupation, Citizenship and Immigration Services (CIS) looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or 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.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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 beneficiary does not possess a U.S. or foreign baccalaureate degree, nor does the proffered position require a license or certification. Therefore, it remains for the petitioner to establish that she is qualified to perform the duties of its proffered position on the basis of her training and/or experience under the fourth and final criterion noted above.

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), equivalence to a U.S. baccalaureate or higher degree shall mean the achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty, and shall be determined by one or more of the following requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (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;
- (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.

The AAO finds nothing in the record to establish the beneficiary's degree equivalency under the first four criteria just noted. It therefore turns to its own evaluation of the beneficiary's experience, as provided for at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

When evaluating a beneficiary's qualifications under the fifth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D), CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two

recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

On appeal, counsel contends that the beneficiary's 23 years of experience in missionary work, both in Korea and in the United States as a religious worker, provide her with the equivalent of a baccalaureate or higher degree in theology. As proof of that employment, the record includes a number of documents describing the beneficiary's employment history and commending her commitment to her religious calling, including a recommendation from a Korean church identifying her as performing missionary work between 1980-1999, a certificate from the same church showing her to have been a Bible teacher from 1989-1999, and a statement from the U.S. church that employed her as religious worker between 1999-2003. However, while these materials offer evidence of the humanitarian and religious nature of the beneficiary's work and the types of activities in which she has participated over the years, they do not establish that she has employment experience equivalent to a U.S. baccalaureate or higher degree in theology.

As just noted, a petitioner seeking to establish a beneficiary's degree equivalency on the basis of employment experience must prove that the employment included the theoretical and practical application of the specialized knowledge required by the specialty occupation. To determine whether a beneficiary's previous employment has required such an application of specialized knowledge, CIS requires a detailed description of the beneficiary's employment history, including the specific tasks and activities performed by the beneficiary in carrying out his or her duties. In the instant case, however, the materials submitted by the petitioner describe only the types of duties performed by the beneficiary since 1989 -- Bible teaching, witnessing, counseling and evangelizing. They offer no indication of the specific tasks performed by the beneficiary in carrying out these duties and, therefore, provide no insight into the nature of her previous employment. As a result, the AAO can make no determination as to whether that employment included the theoretical and practical application of theological knowledge.

The AAO also finds the record to contain no evidence to establish that the beneficiary's employment experience was gained while working with peers, supervisors, or subordinates who have degrees, or the equivalent, in theology or a related field. The statements submitted by members of the clergy and others regarding the beneficiary's employment do not describe the circumstances in which the beneficiary worked, i.e., there is no indication that the beneficiary's employment involved coworkers, supervisors or subordinates. Accordingly, the AAO concludes that the petitioner is unable to establish that the beneficiary's employment experience provides her with the equivalent of a degree in theology under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of 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.