

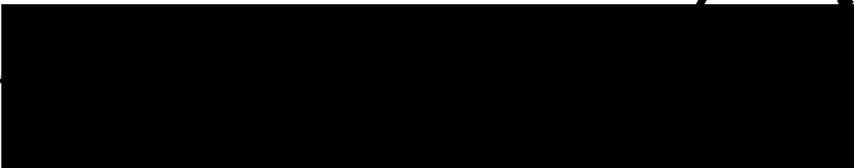
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

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MAY 16 2005

FILE: SRC 04 030 52646 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 director of the 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 ministerial association that seeks to employ the beneficiary as a ministry coordinator. 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 proffered position is not a specialty occupation. Counsel submits a brief and additional evidence.

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) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a ministry coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail being responsible for conference and meeting planning; coordinating ministry communication (magazine, monthly letter, etc); coordinating projects for the organization as designed; overseeing and planning various ministry programs for organization; counseling members; organizing workshops and services for annual national convention; overseeing license and ordination program; coordination and planning of materials and curriculum for Critical Incident Stress Management Course; and being responsible for financial record keeping and monitoring various budgets.

The petitioner stated that the minimum requirement for the position is a bachelor's degree in Theology or related field (or equivalent).

The director was unable to complete the processing of the petition and requested additional information establishing the proffered position was a specialty occupation. Additionally, the director asked whether the petitioner had employed personnel in the position and if so, to provide evidence of such employment.

Counsel for the petitioner responded to the request and stated that the petitioner had submitted letters from three religious organizations, which counsel contended established that the minimum requirement for entry into a ministry coordinator position is a baccalaureate degree. Additionally, the petitioner submitted various internet job postings for a variety of ministry coordinator positions. Counsel further explained that "due to a diversity in religious practices, the job duties of a 'Ministry Coordinator' may vary." However, counsel explained that "it is apparent that a religious organization would require that a qualified individual have, at a minimum, a baccalaureate degree in theology for a Ministry Coordinator position." Counsel contended that the nature of the proffered position's duties are so specialized and complex that specialized knowledge is required to perform the duties. Counsel added that the specific responsibilities and duties of the position "require that the qualified individual have the ability to apply theoretical knowledge that is obtained through formal education and a degree (or the equivalent) in Theology or related field."

The director determined that the proffered position was not a specialty occupation.

On appeal, counsel contends that the law was inappropriately applied and that the analysis used in reaching the decision was inconsistent with the information provided. Counsel explains that the petitioner is a ministerial association that offers fellowship, inspiration, and training to Word of Faith Ministries. Counsel states that the petitioner has over 800 members throughout the world and employs two individuals who are engaged in performing and facilitating comprehensive religious ministry support. Counsel explains that the petitioner is an association of churches and ministries and is designed to perform and facilitate comprehensive ministry support to its members. Additionally, counsel refers to the *O*Net* OnLine Occupational Information Network descriptions for clergy and instructional coordinator.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO considers 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 Department of Labor's Occupational Outlook Handbook (*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.Minn 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

A thorough review of the *Handbook* discloses that the duties of the proffered position are for an administrative services manager. The *Handbook* indicates that administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services for many diverse organizations. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management and telecommunications management. Additionally, the *Handbook* states that specific duties for these managers vary by degree of responsibility and authority. For example mid-level managers develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer services. The *Handbook* notes that in small organizations, a single administrative services manager may oversee all support services.

The *Handbook* states the following about the training and educational requirements for administrative services manager positions:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. In large organizations, however, administrative service managers are normally hired from outside and each position has formal education and experience requirements.

The petitioner fails to establish the first criterion because the *Handbook* states educational requirements vary widely. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits internet job postings from a wide variety of religious organizations.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. Some postings state that the positions require a bachelor's degree and other postings indicate that a bachelor's degree in theology is required. Moreover, the advertised job

descriptions are dissimilar to the proffered position. For instance, Ministry Coordinator Detroit Lakes United Methodist Church requires oversight of the lay ministry; the Diocese of San Bernardino requires designing, developing, coordinating and teaching courses; the Diocese of Winona requires the developing and administering of programs for youth. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement. Additionally, the petitioner provided a letter from a religious organization which indicated that it had seven individuals in the position of ministry coordinator, all of whom possess bachelor's degrees in Theology and related fields. The letter does not establish that this organization provides the same services as the petitioner and that the duties of the proffered position are similar to those of its ministry coordinators or that the degree requirement is common to the industry.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the duties of the proffered position are performed by administrative managers, a position that does not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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. Counsel asserts that the "specific job duties of the proposed position require the theoretical and practical application of a body of highly specialized knowledge that relate to theology and its application in counseling members, and administering advice and services based on faith in order to perform the duties. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The majority of the listed duties are administrative: "conference and meeting planning; coordinating ministry communication (magazine, monthly letter, etc.); coordinating projects; and organizing workshops, and services for annual convention; responsible for financial record keeping and for monitoring various budgets. Neither counsel nor the petitioner establish how the duties of the proffered position require a degree in theology. The petitioner generally states that one of the duties is to counsel members without explaining in detail what that duty entails. Although the petitioner stated that the beneficiary would oversee and plan various ministry programs, the record does not contain evidence establishing what the programs are or how this duty requires a degree in a specific specialty as required by the statute. It cannot be concluded that the nature of the specific 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. Once again, the *Handbook* reveals that the duties of the proffered position are performed by administrative services managers, an occupation not requiring a bachelor's degree in a specific specialty.

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.

Beyond the decision of the director, upon review of the beneficiary's qualifications, the petitioner submitted an education and experience evaluation letter which states that the beneficiary "may have achieved the

academic equivalent of a Bachelor of Arts degree in Theology from Bible College in the United States.” The language used in the evaluation does not make it clear that the beneficiary has achieved the equivalent of a bachelor’s degree in theology. Additionally, it is not clear from the record that this official 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 pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The record does not contain independent evidence of the evaluator’s authority to grant college-level credit. The petitioner did not provide a letter from a dean or provost that verifies the evaluator’s authority to grant college-level credit in the specialty. The petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation. 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.