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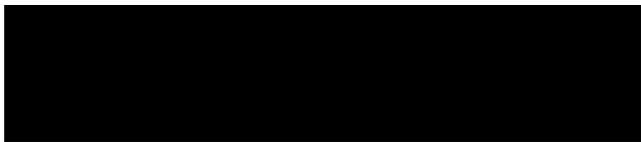


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FILE: WAC 04 130 52076 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2006**

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, Chief
Administrative Appeals Office

DISCUSSION: The director of the California 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 an inter-denominational Korean-American full-Gospel Oriental Mission Christian church, established in 1973, and has annual gross receipts of approximately \$8.9 million. It seeks to employ the beneficiary as a religious education director 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 based on his determination that the proffered position was not 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) the petitioner's response to the director's request for evidence, dated September 24, 2004; (4) the director's denial letter; and (5) Form I-290B, with the counsel's brief and new and additional evidence.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a religious education director. The petitioner described the duties of the proffered position as follows:

- Coordinate activities with religious advisers and councils to meet the religious needs of students;
- Counsel individuals regarding health, financial, and religious problems;
- Plan congregational activities and projects to encourage participation in religious education programs;
- Supervise instructional staff in religious education programs, and evaluate their performance;
- Plan, develop and update curricula, and recruit and train educational staff;
- Promote student participation in extracurricular congregational activities;
- Assist and advise groups in promoting interfaith understanding;
- Plan and conduct conferences dealing with interpretations of religious ideas;
- Solicit support, participation, and interest in religious education programs from congregation members, organizations, officials, and clergy;
- Analyze member participation and changes in congregation emphasis to determine needs for religious education;

- Manage the Junior High Ministry religious education budget and analyze revenue and program cost data to determine budget priorities; and
- Order and distribute school supplies such as textbooks, workbooks, paper, etc. for the junior High Ministry's religious education program.

The petitioner stated that it requires a bachelor's degree; that in the past the position was filled with degreed candidates; and that its constitution requires a degree for the position.

The director found that the proffered position was not a specialty occupation because the duties are not so specialized and complex as to require a bachelor's degree in a specific field of study. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel asserts that the proffered position has duties similar to those of a religious education director and points to the specific vocational preparation (SVP) code in the Department of Labor's *Dictionary of Occupational Titles (DOT)*. Counsel also makes reference to an assessment letter from [REDACTED] a Vice President of Academic Affairs for the Mars Hill Graduate School and an Interim Dean of Religion at Seattle Pacific University, stating that the job duties are similar to that of a senior manager position, and that churches of the size and complexity as the petitioner's have multiple senior positions that require advanced education.

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.

To determine whether the duties just described are those of a specialty occupation, the AAO first 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, 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.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO finds the duties of the proffered position are similar to those of self-enrichment teachers. The *Handbook* discusses the duties of self-enrichment teachers, and the educational requirements establishing that it is an occupation that does not require a bachelor's degree in a specific specialty. The *Handbook*, at <http://www.bls.gov/oco/ocos064.htm>, reports:

Self-enrichment teachers provide instruction in a wide variety of subjects that students take for personal enrichment or self-improvement. Some teach a series of classes that provide students with useful life skills, such as cooking, personal finance, and time management classes. Others provide group instruction intended solely for recreation, such as photography, pottery, and painting courses. Many others provide one-on-one instruction in a variety of subjects, including dance, singing, or playing a musical instrument. The instruction self-enrichment teachers provide seldom leads to a particular degree and attendance is voluntary, but dedicated, talented students sometimes go on to careers in the arts. Teachers who conduct courses on academic subjects in a non-academic setting, such as literature, foreign language, and history courses, are also included in this occupation.

Self-enrichment teachers provide instruction on a wide range of subjects, so they may have styles and methods of instruction that differ greatly. Most self-enrichment classes are relatively informal and not demanding of instructors. Some classes, such as pottery or sewing, may be largely hands-on, with the instructor demonstrating methods or techniques for the class, observing students as they attempt to do it themselves, and pointing out mistakes to students and offering suggestions to improve techniques. Other classes, such as those involving financial planning or religion and spirituality, may be more similar to a lecture in nature or rely more heavily on group discussions. Self-enrichment teachers may also teach classes offered through religious institutions, such as marriage preparation or classes in religion for children.

With respect to training and qualifications for self-enrichment teachers, the *Handbook* states:

The main qualification for self-enrichment teachers is expertise in their subject area, but requirements may vary greatly with both the type of class taught and the place of employment. In some cases, a portfolio of one's work may be required. For example, to secure a job teaching a photography course, an applicant would need to show examples of previous work. Some self-enrichment teachers are trained educators or other professionals who teach enrichment classes in their spare time. In

many self-enrichment fields, however, instructors are simply experienced in the field, and want to share that experience with others.

In some disciplines, such as art or music, specific teacher training programs are available. Prospective dance teachers, for example, may complete programs that prepare them to instruct any number of types of dance—from ballroom dancing to ballet. In addition to knowledge of their subject, self-enrichment teachers should have good speaking skills and a talent for making the subject interesting. Patience and the ability to explain and instruct students at a basic level are important as well, particularly when one is working with children.

Opportunities for advancement in this profession are limited. Some part-time teachers are able to move into full-time teaching positions or program administrator positions, such as coordinator or director, when such vacancies occur. Experienced teachers may mentor new instructors.

The *Handbook* confirms varying educational requirements for self-enrichment teachers, including experience in a specific field, and indicates that self-enrichment teachers may advance to program administrator positions, such as director, when such vacancies occur. There is no indication that a baccalaureate or equivalent degree is required for self-enrichment teachers.

The AAO concurs with the director's determination that the proffered position does not require a bachelor's degree or its equivalent, in a specific specialty, as reported in the *Handbook*. Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position as required to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(ii)(A)(2) – the petitioner must establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

Regarding parallel positions among Korean-American Christian churches, counsel asserts that because the employer is a Korean-American Christian church, it has higher educational standards than might be required by non-Korean-American denominations, because the Korean culture places greater emphasis on education. No evidence of record establishes that Korean-American churches place a higher value on formal religious education than their non-Korean counterparts. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As previously discussed, the critical element is not the title of the position nor an employer's self-imposed standards, but whether the

position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

With the appeal brief, counsel submitted letters from four churches to establish a degree requirement among Korean-American Christian churches. It is noted that only the Presbyterian church, which is unlike a non-denominational full-Gospel Christian church, specified a degree in theology for its pastoral staff. None of the other churches specified a degree in a specialty for a director of religious education. Also, the petitioner provides no information that would establish these churches as organizations of comparable size and complexity to the petitioner. Furthermore, there is no evidence to show that the proposed duties of the proffered position are similar to the duties of religious education directors of these institutions. No other evidence of record establishes the first prong of the second criterion.

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive as proof of the degree requirement for religious education director. The *DOT*'s SVP rating does not indicate 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 is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe 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.

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. Therefore, the petitioner has failed to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO finds the petitioner to have provided no evidence that would support a finding that the duties of the proffered position require a degree in a specialty. Counsel referenced an assessment letter from [REDACTED], stating that the job proffered duties are similar to the duties of a senior management position and that the duties of the proffered position are so complex that they require a degree in a specialty. Counsel also submitted a list of 18 of the petitioner's past and present religious education directors, the petitioner's W-2 wage and tax statements for 2001, 2002, and 2003, and its quarterly wage and withholding report for the period ending March 31, 2004. The AAO notes that the earnings statements indicate that of the 18 past and present religious education directors listed, 7 are included in the March 31, 2004 quarterly wage and withholding report. These reports indicate that the petitioner had seven religious education directors during the first quarter of 2004, including one for the intercessory prayer ministry, and one for each of a number of children's ministries. It appears from the job duties that the beneficiary will be charged with the junior high ministry. Given the number of employees with the title of religious education director serving in the same time period and in the same department, it is unlikely that the duties of the proffered position duties are so complex or unique that they may be performed only by an individual with a degree in a specialty. There is a reasonable

inference that the duties of the proffered position are similar to several other religious education directors, and therefore cannot be characterized as duties that fit a senior management profile.

Therefore, the record also fails to establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. Accordingly, the petitioner has not established its position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. To determine the petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

The petitioner submitted a list of 18 of the petitioner's past and present religious education directors to establish its hiring practice. The petitioner also noted that its church constitution states that a "bachelor's or higher degree from a Theological School recognized by the church" is required in order to qualify for a religious education director position. The AAO notes that of the 18 persons listed as present or former directors of religious education, 12 are listed as graduates of the Talbot School of Theology, Fuller Seminary, Regent College, Westminster Seminary, Masters Theological Seminary, and World Mission University and Theological Seminary, none of which are accredited.¹ For the three who received theological degrees abroad no educational equivalency is provided, and the AAO is unable to determine whether the degrees are the equivalent of a degree from an accredited university in the U.S. One is listed as a graduate of Oberlin College, and the Chandler School of Theology at Emory University, and another of Biola University, which are accredited, although no degree or transcript is provided establishing either of these employees education. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Only one of the 18 has a copy of a degree from an accredited university in the U.S., [REDACTED] from the Golden Gate Baptist Theological Seminary. Thus, the petitioner has not established that it requires, or has hired persons as religious education directors who have obtained a bachelor's degree in Theology or its equivalent. CIS does not accept the requirement of a degree from an unaccredited institution as evidence of a specialty occupation under this criterion. Accordingly, the petitioner has not established its position as a specialty occupation under the third criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

¹ See: <http://www.ope.ed.gov/accreditation>.

On appeal, counsel contends that the duties of the proffered position satisfy the criterion's requirements. Counsel stated that the beneficiary will perform the duties of a religious education director. As noted above, however, the petitioner has not distinguished the duties of the proffered position from those of the seven other religious education directors of record. The record does not establish that the beneficiary will run the religious education department at the church, or that her duties are more complex than those of a self-enrichment teacher. Therefore, the petitioner has not established that the specific duties are so specialized or complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

Therefore, the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the director's decision, the beneficiary is not qualified to perform the duties of a specialty occupation. The record reflects that the beneficiary received a Bachelor of Arts in Biblical Studies from World Mission University in Los Angeles, CA on December 19, 2003. World Mission University is not an accredited university.² Thus the beneficiary is not qualified to perform the duties of a specialty occupation. *See*: 8 C.F.R. § 214.2(h)(4)(iii)(c)(1).

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.

² *See*: <http://www.ope.ed.gov/accreditation>.