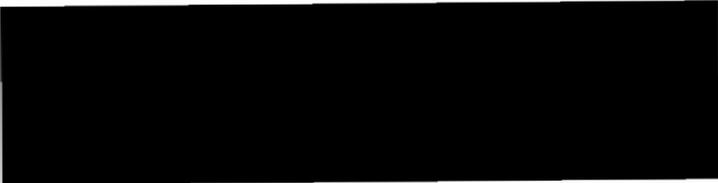




U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 063 50903 Office: CALIFORNIA SERVICE CENTER Date: **AUG 16 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.

for Michael T. Kelly
Robert P. Wiemann, Chief
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 Catholic church that seeks to employ the beneficiary as a finance specialist. 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 finding that the proffered position is not a specialty occupation. On appeal, counsel submits a timely appeal.

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) the 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) the Form I-290B, the brief, 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 finance specialist, and asserts that it requires a bachelor's degree in business administration or a related field. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. These documents describe the proposed duties as recording the financial transactions of the church in the primary books of accounts such as the journal and the ledger; preparing the financial reports such as the summary of receipts and collections and the statement of the financial position at the end of an accounting period; assisting the church officials in determining the financial goals, objectives, and budgets; overseeing the management of church funds, and supervising cash management activities; assisting church officials in planning, capital raising, and financial sourcing activities in order to attain smooth financial operations; monitoring and controlling the flow of cash operations in order to meet the operational needs of the church; assisting church management in preparing monthly, quarterly, and annual budgets and reports; preparing and filing state and federal tax returns and reports; monitoring and interpreting cost ratios in order to control finances; and ensuring that insurance needs are properly handled and risks are managed.

The director stated that many of the proposed duties reflect those of bookkeeping, accounting, and auditing clerks as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and he stated that such clerks do not require a baccalaureate-level degree in accounting.

On appeal, counsel states that the offered position is similar to a financial manager as that occupation is described in the *Handbook*. Counsel asserts that not all of the proposed duties must be at the level of a specialty occupation. Counsel cites excerpts from *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal., 1989) to establish the offered position as a specialty occupation. Counsel maintains that the petitioner satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has not established that the proffered position is a specialty occupation.

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.

Counsel contends that the position is a specialty occupation requiring a bachelor's degree in business administration. The petitioner's educational requirement is not enough to establish the proposed position as a specialty occupation, however. To qualify as a specialty occupation, the Act states that the offered position must require a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry

into the occupation. As indicated in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

With the case here, the petitioner accepts the educational equivalent of a baccalaureate degree of generalized title, business administration, without indicating further specification. As indicated in *Matter of Michael Hertz Assocs.*, the petitioner's educational requirement does not establish that the offered position requires a baccalaureate degree in a specific specialty. As such the petitioner satisfies none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; the petitioner normally requires a degree or its equivalent in a specific specialty for the proffered position; or 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 in a specific specialty.

The AAO also notes that, as reflected in the listing of the proposed duties at page 3 of this decision, the petitioner has limited its information about the proposed duties to exclusively generalized terms (such as “[a]ssist church officials in determining the financial goals, objectives, and budgets”; and “[a]ssist the church officials in planning capital raising and financial sourcing activities in order to attain smooth financial operations”) that do not relate actual substantive matters on which they would be performed or how performance of the duties in relation to those actual matters would involve the theoretical and practical knowledge of the level of highly specialized knowledge in a specific specialty that is required by the statutory and regulatory provisions for a specialty occupation. For this reason also the evidence of record fails to establish that a specialty occupation is the subject of the instant position.

As related in the discussion above, the petitioner has failed to establish the proposed position as 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.