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**U.S. Citizenship
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02

FILE: WAC 04 215 54150 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 2006**

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a church. It seeks to employ the beneficiary as the minister of its outreach program and to classify her 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 on the ground that the record failed to establish that the proffered position qualifies as a specialty occupation.

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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including the Form I-129 and an accompanying letter, the petitioner described itself as a church that was established in 1938, belongs to the Association of Unity Churches, and has 109 members. The petitioner stated that it has two employees, gross annual income of \$201,643.32, and seeks to employ the beneficiary for three years, part-time, as its outreach minister. The duties of the position were listed as follows:

- Participate in English service such as a Daily Word reader.
- Help the Youth Education.
- Plan, organize, and direct the Mandarin speaking Divine Chinese Ministry through study groups and activities.
- Provide counseling and guidance relative to marital, health, financial, and religious problems.
- Coordinate and co-teach the Let's Talk in English, ORTV Magazines, English as Second Language classes as community service.
- Design, arrange, and coordinate programs, activities, and projects to attract and promote the participation of the Mandarin group.
- Participate in the regional and national convention of the Association of Unity Churches.
- Assist minister in conducting worship, wedding, funeral, and other services.
- Visit church members in hospitals and convalescent facilities or at home to offer spiritual guidance and assistance such as emergency or referral to community support services.
- May translate or write articles to the publication of the Association of Unity Churches.

The beneficiary is qualified for the job, the petitioner declares, by virtue of her master of divinity from the Pacific Lutheran Theological Seminary in Berkeley, California, awarded on December 17, 1993. The petitioner indicates that the petitioner also earned a bachelor's degree in English literature in June 1980 at the Fu-Jen Catholic University in Taiwan.

In response to the RFE the petitioner stated that the beneficiary would work 15 hours a week. The petitioner provided additional details about the duties of the proffered position, and the estimated percentage of time required by each duty, as follows:

- 50% Plan, organize, and direct the Mandarin speaking Divine Chinese Ministry through study groups and activities. This study plan to study the book called "The Quest" and "A Course of Miracles" in translated Chinese version and in addition to seasonal celebration activities.
- 10% Provide spiritual counseling and guidance relative to marital, health, financial, and religious problems in various settings including office, congregants' homes, etc.
- 13% Coordinate and co-teach the Let's Talk in English, ORTV Magazines, English as Second Language classes as community service at petitioner's fellowship hall.
- 10% Design, arrange, and coordinate programs, activities and projects to attract and promote the participation of the Mandarin group that includes designing fliers, newspaper advertisements or broadcasting, etc.
- 7% Visit church members in hospitals and convalescent facilities or at home to offer spiritual guidance and assistance such as emergency or referral to community support services.
- 10% Assist in English service by reading Daily Word.

In addition, the petitioner indicated that the beneficiary would help youth education by reading stories to children; assist the minister in conducting worship, wedding, funeral and other services; participate in the regional and national convention of the Association of Unity Churches; and may translate or write articles for publication by the Association of Unity Churches.

In his decision the director determined that the duties of the proffered position reflect those of an assistant minister/pastor, as described under the occupational sub-category of Protestant ministers in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The director cited language in the *Handbook* indicating that a baccalaureate level of education is not the normal minimum requirement for entry into such a position. The director referred to a letter in the record from another church stating that it had recently hired an associate pastor with a bachelor's degree and a master of divinity degree, and found that the letter was insufficient evidence to establish that a degree requirement is common to the industry in parallel positions among similar organizations. The evidence of record did not show that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree, the director declared, or that the petitioner has a history of requiring a baccalaureate degree for the position. Lastly, the director found that there was insufficient evidence in the record to show that the duties of the proffered position are so specialized and complex that knowledge associated with a baccalaureate or higher degree in a specific specialty is required to perform them. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that a degree requirement is common to its industry in parallel positions among similar organizations. The petitioner points out that translating religious materials from English into Mandarin Chinese is an important feature of the job, which is one factor that makes the position so specialized and complex that a specialty degree is required to perform it. Additional documentation has been submitted, including some census data about the Asian population in the United States, information about Chinese churches in the United States, and three letters from pastors or parishioners from churches in southern California with significant ethnic Chinese congregations who discuss the beneficiary's qualifications for the proffered position.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

Based on the petitioner's description of the job duties, the AAO determines that the proffered position reflects a combination of two occupational sub-categories discussed in the *Handbook*. In addition to the duties of an assistant pastor (*i.e.*, assisting the pastor in conducting religious services and performing other clerical duties), the proffered position incorporates the duties of a director of religious activities and education. As described in the *Handbook*, 2006-07 edition:

[Directors of religious activities and education] direct and coordinate activities of a denominational group to meet religious needs of students. [They] plan, direct, or coordinate church school programs designed to promote religious education among church membership. [They] may provide counseling and guidance relative to marital, health, financial, or religious problems.

As for educational requirements, the *Handbook* states the following with respect to members of the clergy in general:

Educational requirements for entry into the clergy vary greatly. Similar to other professional occupations, about three out of four 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.

Handbook, 2004-05 edition, at 187. For directors of religious activities and education, the *Handbook*, 2006-07 edition, states that the "most significant source of postsecondary education or training [is a] bachelor's degree."

As indicated in the *Handbook*, a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a position in the clergy, or as a director of religious activities and education. While many denominations may require a bachelor's degree for clergy members, some do not. Though a bachelor's degree may be required for many directors of religious activities and education, no specialty field is indicated in the *Handbook* and some positions may not require a baccalaureate degree in any field. The AAO concludes that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because the record does not establish that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes one letter from the senior pastor of a Lutheran church in California stating that he had recently hired a part-time associate pastor with a master of divinity degree to conduct outreach activities as well as worship and study groups in Chinese. The letter does not provide a detailed description of the job duties or explain why a master's degree in divinity is required to perform the duties of the job. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. The petitioner must show that the performance demands of the position require a specialty degree. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

The AAO determines that the subject letter is not persuasive evidence that a baccalaureate or higher degree in divinity, or any other specialty, is required to perform the services of the proffered position. Furthermore, one letter does not constitute sufficient evidence to establish an industry standard. The three

letters submitted by the petitioner on appeal – two from pastors and one from a parishioner – discuss the beneficiary’s qualifications for the proffered position, not whether a specialty degree is required to perform the position. Thus, the documentation of record does not establish that a degree requirement in a specific specialty is common to the petitioner’s industry in parallel positions among similar organizations, as required for the position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record demonstrate that the proffered position is so complex or unique that a baccalaureate or higher degree in a specific specialty is required to perform it. Though the petitioner asserts that the translation duties from English into Mandarin Chinese are a unique and complex feature of the position, the petitioner has not shown that a specialty degree is required to perform this part of the job. The *Handbook*, 2006-07 edition, states that “[t]he educational backgrounds of interpreters and translators vary Although a bachelor’s degree is often required . . . it is acceptable to major in something other than a language.” The beneficiary’s knowledge of Mandarin Chinese was presumably acquired by growing up as a native speaker in Taiwan. The petitioner claims that the beneficiary earned a bachelor’s degree in English literature at a Taiwanese university, but the record does not show that the beneficiary’s knowledge of English was acquired in that degree program. Thus, the record does not establish that a baccalaureate or higher degree in a specific academic specialty is required to perform the translating duties of the proffered position. Accordingly, the petitioner has not shown that the proffered position qualifies as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With respect to the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor’s degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in divinity or a related specialty. Based on the evidence of record, the AAO concludes that the duties of the position could be performed by an individual with less than baccalaureate level knowledge in divinity or a related specialty.

For the reasons discussed above, the record fails to establish that the proffered position meets any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.