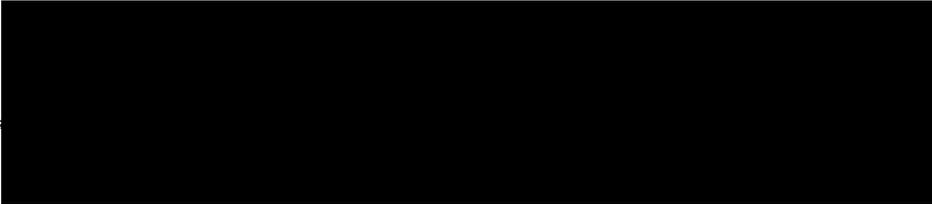




U.S. Citizenship  
and Immigration  
Services

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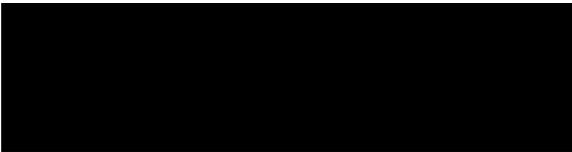
FILE: EAC 03 196 50393 Office: VERMONT SERVICE CENTER Date: DEC 01 2005

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 service center director 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 church and seeks to employ the beneficiary as a music director. It 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 does not qualify as a specialty occupation. On appeal, the petitioner submits a brief and additional information asserting that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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

[A]n 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 are 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a music director. Evidence of the beneficiary’s duties was included with the Form I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would:

- Train and direct the church choir;
- Teach choir members their respective parts;
- Conduct weekly practice with the choir and musicians for weekly services and special programs;
- Conduct group rehearsals and performances to achieve desired effects, such as tonal and harmonic balance, dynamics, rhythm, tempo and shading, while utilizing knowledge of music theory;
- Arrange the musical portion of religious services in consultation with the pastor in accordance with the religious tradition and principles of the church;
- Select music to suit performance requirements such as the prelude, hymns, chants, anthems, offertory, postlude, etc.;
- Transcribe musical compositions and melodic lines to adapt them to voices and instruments for religious services;
- Edit and occasionally compose variations of music for religious services;
- Compile and publish anthems for choral music;
- Translate musical pieces for voices and instruments;

- Analyze liturgy for musical presentation for worship services;
- Conduct groups with instrumental accompaniment;
- Select and teach music pieces to vocalists and instrumentalists;
- Teach vocal music to young adults and youth members of the congregation;
- Train and lead praise time for groups and direct the praise band;
- Select and teach music pieces and practice;
- Give music lessons to students in instruments such as the piano and violin;
- Provide musical accompaniment on the piano or organ during worship services;
- Direct congregants in hymnal singing and responsive reading;
- Read/chant liturgical texts during worship services;
- Teach congregants the religious significance of liturgy and hymns;
- Prepare and conduct educational seminars and workshops on music theory, music history, and sacred music for choir members and congregants;
- Provide religious music continuing education programs; and
- Provide leadership in organizing various services and programs with musical components/activities in them such as cantata services, choir festivals, revival services, retreats, Vacation Bible School, and community wide music festivals, etc.

The petitioner requires a minimum of a bachelor's degree in music for entry into the proffered profession.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. 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 an industry 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)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are those normally performed by music directors, choral directors, musicians and related workers as described in the *Handbook* under the classification “musicians, singers, and related workers.” A music director conducts, directs, plans, and leads instrumental or vocal performances by musical groups, such as orchestras, choirs, and glee clubs. Conductors lead instrumental groups, such as orchestras, dance/show bands, and various musical ensembles. These leaders audition and select musicians, choose the music most appropriate for their talents and abilities, and direct rehearsals and performances. Choral directors lead choirs and glee clubs, sometimes working with a band or an orchestra conductor. Arrangers transcribe and adapt musical compositions to a particular style for orchestras, bands, choral groups, or individuals. These duties are the duties to be performed by the beneficiary in a religious setting. According to the *Handbook*, musicians need extensive and prolonged training to acquire the necessary skills, knowledge, and ability to interpret music. Formal training may be obtained through private study with an accomplished musician, in a college or university music program, or in a music conservatory. Musicians who do not meet public school education requirements (a bachelor’s degree for teaching in public schools) may teach in private schools and recreation associations or instruct individual students in private sessions. Music directors, composers, conductors, and arrangers need considerable related work experience, or advanced training in these subjects. It is apparent, therefore, that a bachelor’s degree in a specific specialty is not the minimum requirement for entry into the proffered position. The duties of the position are routinely performed by individuals with less than a baccalaureate level education. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support thereof submits copies of seven job advertisements. Of the seven advertisements submitted, only four appear to be from religious organizations, and all four require at least a bachelor’s degree in music. There is no indication in any of these advertisements that the churches are similar in size to the petitioner, a congregation with 36 members and two employees. Additionally, four advertisements are insufficient in scope to establish an educational standard for the position in the industry. This is especially true when the advertisements are contrary to the educational requirements set forth in the *Handbook* for the position. The remaining advertisements are of little evidentiary value as they are for positions teaching in educational institutions and not from organizations similar to that of the petitioner. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree in a specific specialty for the proffered position as the position is apparently new in the petitioner’s organization. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties appear to be routine for music directors in religious organizations. As such, the petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner also makes reference to the *Dictionary of Occupational Titles* SVP rating for music directors (choral directors) in an effort to qualify the position as a specialty occupation. The petitioner's reference, however, is not persuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

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.

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 and the appeal shall accordingly be dismissed.

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