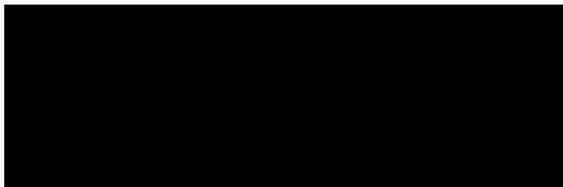




U.S. Citizenship
and Immigration
Services

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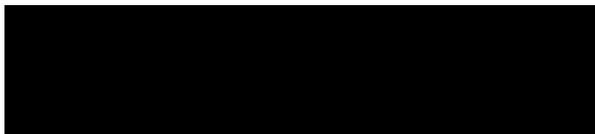
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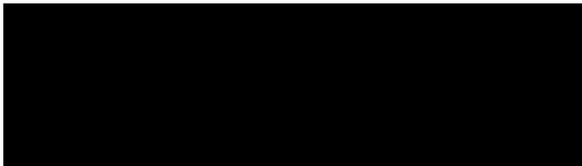
FILE: EAC 03 182 53433 Office: VERMONT SERVICE CENTER Date: NOV 02 2005

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
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 its outreach program manager 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 Form I-129 and an accompanying letter the petitioner described itself as a tax-exempt church organization, established in 1998, with four employees and gross annual income of approximately \$360,000. The petitioner stated that it had commissioned an outreach program to educate low-income women in the surrounding community on HIV/AIDS prevention, infant mortality, basic hygiene, child care, and other basic welfare concerns such as accessing social services. The petitioner indicated that it wished to hire the beneficiary to manage its outreach program, which would include such responsibilities as developing methods and procedures to implement the program, coordinating activities, exercising control over personnel and volunteers, and controlling expenditures in accordance with budget allocations. The minimum educational requirement for the position, the petitioner stated, is "a bachelor's degree in a discipline that is multi-functional and practical." The beneficiary fulfilled this requirement, according to the petitioner, by virtue of her bachelor of science degree in biology, which she earned at Eastern Michigan University in April 1999, in addition to several years of experience in the field of social work.

In response to the RFE the petitioner provided additional details about the duties of the proffered position. The primary focus of the outreach program, the petitioner explained, is to educate low-income women "on the ABCs of HIV/AIDS, to wit:

Abstinence or be faithful, or condom use. For those already infected with the virus, we will teach them how to live with the disease and at the same time, provide them with a firm support system. We also teach teenage mothers basic hygiene and child care amongst others

The beneficiary will be responsible for the recruiting, training and supervision of the administrative staff that will be involved in the program. She will run the day to day activities of the program with her staff. She will review reports and records of activities to ensure that progress is being made and modify or change methodology to attain the program's objectives. She will act as the contrat person in program matters and as liaison with representatives of the government and funding bodies.

The beneficiary will also be responsible for analyzing data, creating cost/benefit analysis, and present findings and options to her superiors to ensure that the allocated funds will meet our set goals. She will control expenditure[s] in accordance with the budget allocation, and is expected to prepare reports of the progress of the program to her superiors."

In her decision the director determined that the evidence of record – including the petitioner's initial statement that the position required a baccalaureate degree in a multi-functional and practical discipline, and counsel's later statement in response to the RFE that the position required a bachelor's degree in the "social sciences or a related science" – did not establish that a bachelor's degree in a specific specialty is the normal minimum requirement for entry into the proffered position. The director determined that the job advertisements in the record for various social welfare program coordinator positions showed that bachelor's degrees in a variety of fields were acceptable for such positions. Furthermore, the evidence of record did not demonstrate that the proffered position is so specialized and complex that it could only be performed by an individual with a baccalaureate degree in biology or a related field of specialty. The

director concluded that the proffered position does not qualify as a specialty occupation under section 101(a)(15)(i)(b) of the Act.

On appeal counsel asserts that the specialized and complex nature of the proffered position requires an individual with a baccalaureate degree in biology or a related field, thus making it a specialty occupation. Counsel also maintains that the outreach program manager position involves educational disciplines beyond the bounds of specific baccalaureate degrees, which is why the petitioner originally stated that the job required a bachelor's degree in a multi-functional and practical discipline. A baccalaureate degree is the industry standard in hiring a full-time church outreach program manager, counsel contends, citing the previously submitted job advertisements for similar positions.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (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 duties of the program outreach manager, the AAO determines that the proffered position fits within the *Handbook's* occupational category of social and human service assistants. That occupation is described, in pertinent part, as follows:

Social and human service assistant is a generic term for people with a wide array of job titles, including human service worker, case management aide, social work assistant, community support worker, mental health aide, community outreach worker, life skill counselor, or gerontology aide. They usually work under the direction of professionals from a variety of fields, such as nursing, psychiatry, psychology, rehabilitative or physical therapy, or social work. The amount of responsibility and supervision they are given varies a great deal

Social and human service assistants provide direct and indirect client services to ensure that individuals in their care reach their maximum level of functioning. They assess clients' needs, establish their eligibility for benefits and services such as food stamps, Medicaid, or welfare, and help to obtain them

Social and human service assistants play a variety of roles in a community. They may organize and lead group activities, assist clients in need of counseling or crisis intervention, or administer a food bank or emergency fuel program They review clients' records, ensure that they take correct doses of medication, talk with family members, and confer with medical personnel and other caregivers to gain better insight into clients' backgrounds and needs

Handbook, 2004-05 edition, at pages 197-98. As for the educational requirements of the occupation, the *Handbook* states as follows:

While a bachelor's degree usually is not required for entry into this occupation, employers increasingly seek individuals with relevant work experience or education beyond high school. Certificates or associate degrees in subjects such as social work, human services, gerontology, or one of the social or behavioral sciences meet most employers' requirements. Some jobs may require a bachelor's or master's degree in human services or a related field such as counseling, rehabilitation, or social work

Educational attainment often influences the kind of work employees may be assigned and the degree of responsibility that may be entrusted to them. For example, workers with no more than a high school education are likely to receive extensive on-the-job training to work in direct-care services, while employees with a college degree might be assigned to do supportive counseling, coordinate program activities, or manage a group home

Id. at 198. According to the *Handbook*, therefore, different jobs in the occupational field require different educational credentials and a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry-level social and human service assistants. While individuals with baccalaureate degrees may be more likely to be hired for program coordinator positions, like the outreach program manager at issue in this petition, the *Handbook* does not indicate that a management position at that level requires a degree in any specific specialty. Accordingly, the record does not support the petitioner's contention that the proffered position requires a bachelor's degree in biology or any other specific specialty, as required for the position to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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 five internet job announcements for managerial positions in the social work field. Two of the advertisers – the City of Roanoke and the State of Washington – are governmental organizations, and are therefore not similar to the petitioner with respect to their line of activity or scale of operations. Of the other three advertising entities, two are religious organizations that require a bachelor's degree or its equivalent for the position, but not in any specific specialty. The last of the advertising entities – a health care company advertising for a “community outreach associate – Korean” – specifies that a baccalaureate degree in business, marketing, or communications is required. The job posting does not indicate that the company is similar to the petitioner in its line of business or scale of operations, however, and the job duties listed in the advertisement differ greatly from those of the petitioner's program outreach manager. Based on the foregoing analysis, the AAO concludes that the internet job postings do not establish that a baccalaureate degree in a specific specialty is a common requirement of the petitioner's industry in parallel positions among similar organizations, as required for the proffered 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 show that the program outreach manager is so complex or unique a position that it can only be performed by an individual with a baccalaureate degree in a specific specialty, as required for the position to qualify 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).

Finally, the record does not establish that the duties of the program outreach manager are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate degree in a specific specialty. None of the duties described by the petitioner involves the theoretical and practical application of a body of highly specialized knowledge in the field of biology, or a related specialty field. The evidence of record indicates that knowledge acquired through a wide variety of baccalaureate degrees or less than a baccalaureate education and relevant work experience is acceptable preparation for the position of outreach program manager. Thus, 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).

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.