

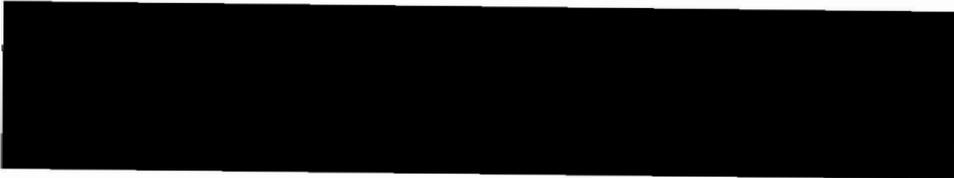
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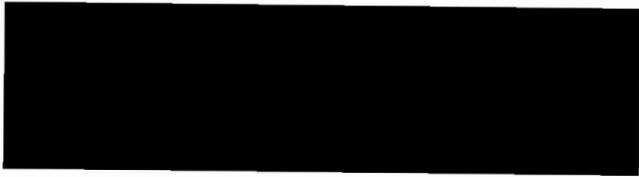


FILE: WAC 03 120 54145 Office: CALIFORNIA SERVICE CENTER Date: SEP 27 2006

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:



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 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 non-profit organization founded in 2002 to provide academic and spiritual resources to diverse religious and cultural groups. The petitioner desires to employ the beneficiary as a teacher/administrator and endeavors to classify him 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, counsel submits a brief and additional information stating 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 requests for additional evidence; (3) the petitioner's response to the director's requests; (4) the director's denial letter; and (5) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a teacher/administrator. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would administer the day-to-day operations of the petitioner and teach classes in Islamic studies.

The petitioner finds the beneficiary qualified for the proffered position by virtue of his foreign education which has been determined by a credentials evaluation service to be equivalent to a Doctor of Philosophy degree in Political Science from an accredited institution of higher education in the United States.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. Though vaguely described the duties of the proffered position are essentially those noted for a general/operations manager in the private sector for a non-profit organization and a teacher who will be teaching subjects for the purpose of self-enrichment. The *Handbook* notes that the formal education and experience of general/operations managers varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into a general/operations manager position. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not required.

The teaching duties associated with the proffered position are not teaching duties in a traditional classroom setting, but ones that are performed in a public forum and open to students for self-enrichment purposes who wish to become educated in Islamic studies. The *Handbook* indicates that self-enrichment teachers teach courses that students take for pleasure or personal enrichment, and are not usually intended to lead to a

particular degree or vocation. The majority of self-enrichment classes are relatively informal and nonintensive in terms of instructional demands. Many classes that self-enrichment educators teach are shorter in duration than classes taken for academic credit, with some finishing in from one or two days to several weeks. The *Handbook* notes that the main qualification for self-enrichment teachers is expertise in their subject area. 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 some disciplines, such as art or music, specific teacher training programs are available. There is no requirement, however, that a self-enrichment teacher have a baccalaureate or higher degree as a minimum requirement for entry into the position. The petitioner has failed to establish that a baccalaureate level education in a specific specialty is normally the minimum requirement for entry into the proffered position and the evidence of record does not establish the first criterion of 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 of that assertion submits opinion letters from Dr. [REDACTED] and Dr. [REDACTED]. Dr. [REDACTED] is a former president of the University of Karachi in Pakistan and states that in his opinion an individual performing the teaching duties assigned to the beneficiary would require a minimum of a bachelor's degree in Islamic studies. Dr. [REDACTED] is a volunteer principal at the South Bay Area Islamic School in San Jose, CA and opines that the performance of the teaching duties of the proffered position would require an individual with a minimum of a university degree in modern and traditional sciences. Neither individual, however, provides any basis for their opinion such as a comparison survey to other Islamic centers, or other objective evidence. Dr. [REDACTED] does not elaborate on the nature of the position at the petitioner's premises, stating that "this syllabus comprehensively covers education for children, youth, and adults." Dr. [REDACTED] did not state that he visited the premises, did not mention the size of the community or the non-academic setting of the proposed teaching. Dr. [REDACTED] statement that a degree in Islamic studies would be required to do justice to the position does not indicate specific facts about the position with the petitioner that led him to this conclusion, or cite to other such centers where a similar position requires a baccalaureate degree in Islamic studies. Dr. [REDACTED] concludes that "this unique combination of [teaching] social and religious values would require a teacher holding a university degree in modern and traditional sciences." He does not cite any local community centers as requiring such a degree. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The submitted opinions are not supported by evidence in the record and they shall, accordingly, be given little weight. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree for the offered position as the position is new with the organization. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the nature of the specific duties, as described by the petitioner, is not 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, nor are the duties so complex or unique that they can be performed only by individuals with a degree in a specific specialty. The AAO notes that the petitioner has submitted a tax return, lease<sup>1</sup>, brochure and syllabus for classes to be taught by the beneficiary. There is no information in the record, however, establishing the population that the center will serve. The brochure indicates that the petitioner would like to establish a private school and university, and requests donations in support of same. There are no records announcing classes or establishing a location for counseling services. There is no indication of record that a program for learning or counseling is underway. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). The duties to be performed are routine in the industry for general/operations managers in a non-profit organization, and for teachers teaching courses for the purpose of self-enrichment in a private setting. The petitioner has failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.

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<sup>1</sup> The stated sole use for the premises in the lease is research, not teaching and counseling.