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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

D2



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

DEC 03 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
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.

On the Form I-129 visa petition the petitioner stated that it is a "Church-Non Profit Organization" with three employees. In order to continue to employ the beneficiary in what it designates as an "Administrator" position, the petitioner endeavors 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which (1) 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 (2) 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry

into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

With the petition counsel submitted a letter, dated January 4, 2009, from the petitioner's pastor. That letter provides the following description of the duties of the proffered position.

Neither that letter nor any other evidence submitted with the visa petition suggested that any of those duties requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

Because the evidence submitted did not demonstrate that the visa petition was approvable, the service center, on March 30, 2009, issued a request for evidence (RFE) in this matter. The service center requested, *inter alia*, (1) a more detailed description of the duties of the proffered position; and (2) an explanation of why the proffered position requires a college degree. The service center also requested that, if the beneficiary would supervise the work of others within the petitioning organization, the petitioner provide an organizational chart showing its hierarchy and staffing levels.

In response, counsel submitted a letter. Counsel provided a description of the duties of the proffered position, which was the same as the previous description, except that "Actively driving and generating fundraising for the organization" was added as a job duty. Although counsel reiterated that the proffered position requires "Management and supervision of a number of staff within the organization," he did not provide the requested organization chart, which would have shown how many of the petitioner's three employees the beneficiary would supervise.

As to the reason the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, counsel stated:

services and marketing strategies, in an effort to uncover new marketing niches. This will involve extensive use of the knowledge of Management, expertise, analysis of data, testing, and experimenting methods, extensive statistical reporting and mathematical modeling.

Counsel did not reveal his basis for making that series of statements. The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof. Although counsel is manifestly permitted to submit argument based on the evidence of record, his entirely unsupported assertions cannot render a petition approvable.

Counsel further stated:

The duties of this professional position could only be satisfactorily discharged by an individual who possesses, at a minimum, a Bachelor's degree in Administration with a management/legal background or equivalent.

Elsewhere in the letter, counsel again asserted that the proffered position requires a bachelor's degree in "Administration with Management/legal background."

Although this might be classified as an argument based on the evidence, counsel provided no explanation of the leap in logic from the duties described to the requirement of a degree in administration with management/legal background.

Counsel further stated:

[The incumbent in the proffered position] needs to have a knack for contacting people, managing the whole event, contact high profile invitees, etc. Furthermore It is clear that responsibility for administrating the organization, it is a specialty occupation.

[Errors in the original.]

Counsel provided no evidence or argument for the proposition that a knack for contacting people, including high profile invitees, is conveyed by earning a bachelor's degree in any specific specialty.

As to the petitioner's previous hiring practices for the position, counsel stated, ". . . before the church hired the beneficiary, it was the Pastor of our Organization along with some volunteers and he has a Bachelors [sic] degree." Again, counsel's basis for that assertion is unclear.

The director denied the petition on June 2, 2009, finding, as was noted above, that the petitioner has not demonstrated that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

On appeal, counsel provided an evaluation, dated August 3, 2009, of the beneficiary's bachelor of law degree from Sao Francisco University in Brazil. That evaluation states that the beneficiary's degree is equivalent to a bachelor's degree in international law earned at a regionally accredited college or university in the United States. Although the AAO is unaware of any U.S. college or university offering a bachelor's degree in international law, it will assume, *arguendo*, the existence of such a program.

Counsel reiterated, once again, that the beneficiary's duties would be supervisory, but did not explain the failure to provide the previously requested organizational chart. Counsel again listed the duties of the proffered position as previously described, and asserted that the beneficiary is qualified

for the position, but without any explanation of which of the duties of the proffered position could not be performed by a person without a minimum of a bachelor's degree or the equivalent in the specific specialty that the petitioner asserts the position requires.

In his letter of July 29, 2006, counsel provided a description of the preparation required for a position as manager of an industrial organization, apparently asserting that the proffered position in the instant case is akin to such a position. The AAO notes that the proffered position is that of church administrator, and has no apparent similarity to a position managing an industrial organization. The evidence pertinent to managing an industrial organization will not be further addressed.

To determine whether a particular job qualifies as a specialty occupation position the AAO does not solely rely on the job title. Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity or entities ultimately determining the work's content.

The AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations.<sup>1</sup> The *Handbook* describes the duties of Administrative Services Managers as follows:

*Administrative services managers* plan, coordinate, and direct a broad range of services that allow organizations to operate efficiently. They might, for example, coordinate space allocation, facilities maintenance and operations, and major property and equipment procurement. They also may oversee centralized operations that meet the needs of multiple departments, such as information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, recycling, wellness, and transportation services. Administrative services managers also ensure that contracts, insurance requirements, and government regulations and safety standards are followed and up to date. They may examine energy consumption patterns, technology usage, and personal property needs to plan for their long-term maintenance, modernization, and replacement.

The proffered position in this case appears to fit within the broad category of Administrative Services Managers as described in the *Handbook*. The *Handbook* describes the requisite education for such positions as follows:

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online, accessed October 25, 2010.

**Education and training.** Specific education and training requirements vary by job responsibility. Office managers in smaller operations or lower-level administrative services managers with fewer responsibilities may only need a high school diploma combined with appropriate experience, but an associate degree is increasingly preferred.

In larger companies with multiple locations, equipment, and technologies to coordinate, higher-level administrative services managers need at least a bachelor's degree. Managers of highly complex services, such as contract, insurance, and regulatory compliance, generally need at least a bachelor's degree in business administration, human resources, accounting, or finance. Lower-level managers may also need a bachelor's degree, but related postsecondary technical training may also be substituted for managers of printing, security, communications, or information technology. Those involved in building management should take a drafting class. Regardless of major, courses in office technology, accounting, computer applications, human resources, and business law are highly recommended.

That passage does not support the proposition that administrative services manager positions normally require a minimum of a bachelor's degree or the equivalent in a specific specialty. Even for the higher-level positions in larger organizations, or those specializing in contracts, insurance, or regulatory compliance, the *Handbook* indicates that a degree in any one of a variety of dissimilar subjects will suffice.

The *Handbook* does not support the position that entry into the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, and the petitioner provided no evidence on that point. The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into administrative service manager positions and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner provided no evidence of the hiring practices of similarly-sized churches seeking administrators, and has not, therefore, demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations. Thus, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position. The only evidence pertinent to those who previously performed the duties of the proffered position is the statement of counsel, in response to the RFE, that the duties of the proffered position were previously performed by volunteers and by the petitioner's pastor. Counsel's basis for that assertion is unclear. However, even assuming, *arguendo*, that counsel's assertion is correct, that the position was previously performed by unidentified volunteers with unspecified credentials and

by the petitioner's pastor, who has a degree in an unidentified subject, that fact would not support the proposition that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not, therefore demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Counsel and the petitioner have described the duties of the proffered position and asserted, with little analysis, that they necessarily require a college degree. Counsel stated, with no apparent basis, that the requisite degree must be in "Administration and Management/legal background." Neither counsel nor the petitioner's pastor, however, has explained to the satisfaction of the AAO why those duties require that specific degree or any degree at all.

The petitioner has not demonstrated that the proffered position or its duties are so complex, unique, or specialized that they can only be performed by a person with a minimum of a bachelor's degree in a specific specialty or the equivalent or that performance of the duties is usually associated with a minimum of a bachelor's degree in a specific specialty or the equivalent. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) or the criteria of the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In this regard, the AAO notes that, to the extent that they are described in the record of proceeding, which is in terms of generalized and generic functions, the duties comprising the proffered position are not indicative of uniqueness or of any particular level of complexity or specialization that would require, or usually be associated with, at least a bachelor's degree in a specific specialty.

For the reasons discussed above, the AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the argument submitted on appeal has not remedied that failure. Accordingly, the appeal will be dismissed and the visa petition denied on this basis.

The record suggests additional issues that were not addressed in the decision of denial. The beneficiary has a Brazilian bachelor of law degree. An evaluation in the record indicates that it is equivalent to a U.S. bachelor's degree in international law. Counsel has stated that the proffered position requires a degree in "Administration and Management/legal background." The record contains no indication that the beneficiary's degree is equivalent to a degree in "Administration and Management/legal background." Even assuming, again, *arguendo*, that the proffered position requires such a degree, the beneficiary has not been shown to be qualified to hold the proffered position. The appeal will be dismissed and the petition denied on this additional basis.

Yet further, as was noted above, the service center requested, in the March 30, 2009 RFE, that, if the beneficiary's duties would be supervisory, as stated in the original description of the duties of the proffered position, the petitioner provide its organizational chart. Despite counsel reaffirming on two different occasions that the proffered position's duties include supervisory duties, no such chart was ever provided. That evidence was relevant to the material fact of whether the duties of the proffered position actually include supervisory duties, and what type of employees the beneficiary

might supervise. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The appeal will be dismissed and the visa petition denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The AAO recognizes that the present petition is for an extension of H-1B classification approved in the previous petition filed by the petitioner on behalf of the beneficiary. A prior approval does not preclude USCIS from denying an extension petition based upon its reassessment of the qualifying factors. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The director's decision does not indicate whether she reviewed the prior approval. If the previous nonimmigrant petition was approved based on the same assertions and evidence as contained in the current record, the approval would constitute material error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved a nonimmigrant petition on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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