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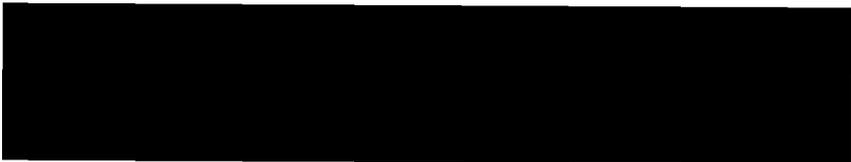
**PUBLIC COPY**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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

D2



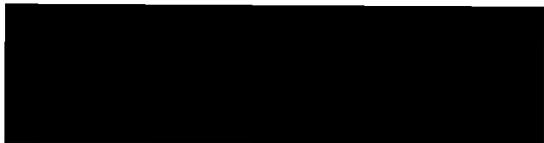
Date: **MAR 20 2012** Office: VERMONT SERVICE CENTER

FILE:

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:**

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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner claims to be a Methodist church with eight employees and a gross annual income of \$753,500. It seeks to employ the beneficiary as an education director and 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 on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*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 [(2)] 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, a proposed 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 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 particular positions 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 (5th 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as an education director. In the petitioner’s support letter dated November 6, 2009, the petitioner states that the beneficiary will perform the following duties in the proffered position:

1. Plan, direct or coordinate all educational programs for youth and college students, as well as the Korean-speaking congregation members, if needed[;]

2. Plan, direct or coordinate all activities of [the petitioner's church] programs for youth and college students[;]
3. Work with the youth and college students of [the petitioner's] church, providing enrichment activities and biblical education through various activities[;]
4. Adapt teaching methods and instructional materials to meet youth and college students' varying needs and interests[;]
5. Conduct classes, worship services, and demonstrations and provide individual instruction to teach skills such as dancing, singing, and writing, etc.[;]
6. Listen to students' problems and consult them. Consult with their parents as well as needed[;]
7. Leas [sic] worship when needed[;] [and]
8. Perform other responsibilities as assigned by the pastors and church staff, etc.

The petitioner's support letter also states that the proffered position is a professional job, requiring an employee with a professional educational background in the field of education. Furthermore, the petitioner states "the position of Education Director for youth and college students is also one that the USCIS normally and traditionally recognizes as that of being a professional position, requiring the attainment of at least a college Bachelor's degree or its equivalent."<sup>1</sup>

The petitioner submitted copies of the beneficiary's graduation certificate and foreign college transcripts, along with a credential evaluation finding that the beneficiary's foreign education is equivalent to a U.S. bachelor's degree in Christian education.

On December 3, 2009, the director issued an RFE requesting the petitioner to submit, *inter alia*, (1) a detailed statement setting forth the beneficiary's proposed duties and responsibilities, including the educational requirements of the proposed position and how the beneficiary's education relates to the position itself; (2) evidence showing that in your organization, a baccalaureate degree in a specific field of study is a standard minimum requirement for the job offered; and (3) if your organization is relatively small, equivalent evidence showing that the industry requires a minimum of a baccalaureate degree for the proffered position.

On December 14, 2009, in response to the director's RFE, the petitioner submitted, in part, (1) the same job description from the petitioner's support letter dated November 6, 2009; (2) a copy of the *Occupational Information Network* (hereinafter *O\*NET*) Summary Report for the

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<sup>1</sup> It must be noted that the primary, fundamental difference between qualifying as a profession and qualifying as a specialty occupation is that specialty occupations require the U.S. bachelor's or higher degree, or its equivalent, to be in a specific specialty. Thus, while the petitioner claims that the proffered position is specifically identified by USCIS as qualifying as a profession as that term is defined in section 101(a)(32) of the Act, that occupation would not necessarily qualify as a specialty occupation unless it met the definition of that term at section 214(i)(1) of the Act.

occupational classification “21-2021.00 – Directors, Religious Activities and Education”; (3) copies of the educational credentials of its education directors; and (4) a list of Sunday school volunteers with their degree information.

In addition, the petitioner indicated that it normally requires a bachelor’s degree in theology or Christian education for the proffered position. The petitioner further stated that according to *O\*NET*, the proffered position falls under Job Zone 4 with a Specific Vocational Preparation (SVP) rating of 7.0 to < 8.0 and requires a four year bachelor’s degree.

The director denied the petition on December 24, 2009.

On appeal, counsel for the petitioner claims that only one of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) needs to be satisfied to determine whether a position is a specialty occupation. Counsel claims that the petitioner satisfied the criteria that the employer normally requires a degree or its equivalent for the position and, therefore, it has demonstrated that the proffered position is a specialty occupation. As the director indicated in the denial that the petitioner failed to provide evidence that the education directors and volunteers are employed by the petitioner, counsel submits copies of the education directors and volunteers’ W-2 Wage and Tax Statements. In addition, counsel submits a letter from [REDACTED]

[REDACTED] nine letters from other churches, and a copy of the U.S. Department of Labor’s (DOL’s) Foreign Labor Certification Data Center Online Wage Library for Directors, Religious Activities and Education.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the DOL’s *Occupational Outlook Handbook* (hereinafter the *Handbook*), on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry’s professional association has made a degree in a specific specialty 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 recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup>

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<sup>2</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.

The AAO notes that the *Handbook* does not have a “Directors, Religious Activities and Education” chapter in the 2010-2011 edition. However, it is listed under “Professional and Related Occupations.” The *Handbook’s* complete comments about directors, religious activities and education are reproduced directly below:

**Directors, religious activities and education  
(O\*NET 21-2021.00)**

Direct and coordinate activities of a denominational group to meet religious needs of students. Plan, direct, or coordinate church school programs designed to promote religious education among church membership. May provide counseling and guidance relative to marital, health, financial, or religious problems.

2008 employment: 80,400

Projected 2008-18 employment change: About as fast as average

Most significant source of postsecondary education or training:

Bachelor’s degree

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., “Professional and Related Occupations,” <http://www.bls.gov/oco/oco20052.htm> (accessed March 7, 2012).

The *Handbook’s* reference to “Bachelor’s degree” - without specification of any particular academic concentration or major – as the “[m]ost significant source of postsecondary education or training” is not evidence that a bachelor’s degree in a specific specialty or its equivalent is a minimum requirement for entry into the occupation to which the proffered position belongs. Therefore, the *Handbook* does not support the proffered position as being a specialty occupation.

The AAO notes that the *O\*NET* Summary Report for 21.2021.00 – Directors, Religious Activities and Education, submitted by the petitioner in response to the RFE, is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty. A designation of Job Zone 4 indicates that a position requires considerable preparation. It does not, however, demonstrate that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See the *O\*NET* Online Help Center, at <http://www.onetonline.org/help/online/zones> (explaining that Job Zone 4 signifies only that *most* but not all of the occupations within it require a bachelor's degree). Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. Therefore, despite the petitioner’s assertions to the contrary, the *O\*NET* information is not probative of the proffered position qualifying as a specialty occupation.

In addition, the AAO notes that the DOL's Foreign Labor Certification Data Center Online Wage Library for Directors, Religious Activities and Education, submitted by counsel on appeal, which counsel points out it indicates "Education & Training Code: 5 – Bachelor's degree," is also insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty. It also fails to demonstrate that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The AAO will now discuss the SVP rating of 7.0 to < 8.0 for the occupation of directors, religious activities and education. The AAO finds that an assignment of an SVP rating of 7.0 to < 8.0 is not indicative of a specialty occupation. This is obvious upon reading Section II of the *Dictionary of Occupational Titles (DOT's)* Appendix C, Components of the Definition Trailer, which addresses the SVP rating system.<sup>3</sup> The section reads:

## II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);

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<sup>3</sup> The Appendix's site is <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 7.0 to < 8.0 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the SVP information is not probative of the proffered position being a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, counsel submitted on appeal a letter from [REDACTED] and nine, nearly identical form letters from other churches as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in churches. The form letters provided, however, establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree or the equivalent in a *specific specialty*. As a result, the petitioner has not established that similar organizations in the same industry commonly require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.

For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “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.” In the instant petition, the record does not demonstrate any complexity or unique nature of the proffered position that distinguishes it from director-of-religious-activities-and-education positions that are held and performed by persons without at least a bachelor’s degree or the equivalent in a specific specialty or its equivalent.

Next, the AAO concludes that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), by establishing that, for the proffered position, the petitioner normally requires at least a bachelor’s degree, or the equivalent, in a specific specialty.<sup>4</sup>

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and

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<sup>4</sup> It should be noted that, to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner’s perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor’s degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

complexity have not been developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties as described in the record appear indistinguishable from the general range of director, religious activities and education positions, for which neither the *Handbook* nor *O\*NET* indicates a usual association with at least a bachelor's degree in a specific specialty or the equivalent as a minimum entry requirement for the occupation.

The petitioner has failed to establish that it has satisfied any of the additional, supplemental requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal must be dismissed and the petition denied for this reason.

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

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