



U.S. Department of Justice
Immigration and Naturalization Service

106

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

PUBLIC COPY

File: [REDACTED] Office: TEXAS SERVICE CENTER

Date: JAN 29 2001

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:

[REDACTED]

identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an artist. She seeks to employ the beneficiary as a secretary. The director determined that the proffered position is not one requiring the services of a skilled worker.

On appeal, counsel states that the job offered has an SVP value of 6. Counsel states that the Department of Labor's Occupational Outlook Handbook indicates that a kindergarten teacher requires a minimum of a baccalaureate degree. Counsel argues that the Department of Labor's Dictionary of Occupational Titles specifies an SVP level of 7 which denotes a Standard Vocational Preparation of from 2 to 4 years, which would require a minimum of a baccalaureate degree.

A reference in the Department of Labor's Dictionary of Occupational Titles DOT, Fourth Edition, 1977 is not enough to establish an occupation is within the professions or is a specialty occupation. The DOT is not designed as a definitive guide for adjudication of petitions for immigration benefits. The department of Labor acknowledged this fact on page xiii of the DOT when it stated:

In using the Dictionary, one should note that the U.S. Employment Service has no responsibility for...setting jurisdictional matters in relation to different occupations.

Section 203(b) (3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b) (3), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. 204.5(1) (3) states, in pertinent part:

(ii) *Other documentation* -- (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.