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U.S. Citizenship
and Immigration
Services

[redacted]

APR 08 2004

FILE: WAC 02 147 52576 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a music school. It seeks to employ the beneficiary permanently in the United States as a music teacher. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the requirements for the proffered position as stated on that approved Form ETA 750 labor certification.

On appeal, counsel submits a brief.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), 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 labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

8 CFR § 204.5(l)(3)(ii) states:

> (B) Skilled workers. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.
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> (C) Professionals. If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary has the qualifications stated on the ETA 750 labor certification. The ETA 750 labor certification submitted in this case states that the proffered position requires that the beneficiary have either (1) an associate of arts (AA) degree in music and two years experience as a music teacher, or (2) a bachelor's degree in music.

The petitioner submitted adequate evidence that the beneficiary had the optional two years of experience. The beneficiary's experience is not in dispute. The remaining issue is whether the beneficiary's education satisfies the education requirement for the proffered position as stated on the Form ETA 750.

With the petition counsel submitted a copy of the beneficiary's Certificate in Music from the College of Music of the University of the Philippines at Diliman and a copy of the beneficiary's transcript. That transcript shows that the beneficiary attended nine semesters and lists the various courses the beneficiary took. The selection of courses clearly evinces a major in music.

Further, counsel submitted the report of an educational evaluator, dated February 27, 2001. That report observes that the beneficiary's coursework is at least equivalent to that required for an associate of arts degree in music in the United States.

The California Service Center did not feel that the evidence demonstrated that the beneficiary has the requisite U.S. associate's degree or bachelor's degree, or an equivalent foreign degree in either instance; therefore, on May 7, 2002, the Service Center requested additional evidence.

The Service Center noted that, according to the terms of the Form ETA 750, the beneficiary is required to have either an associate's degree or a bachelor's degree, or a foreign degree equivalent to one or the other. The Service Center noted that the petitioner had not demonstrated that a certificate awarded in the Philippines is the equivalent of an associate's or bachelor's degree awarded in the United States.

In response, counsel submitted another educational evaluation. This evaluation, dated June 27, 2002, states that the beneficiary's "studies constitute the coursework required for an Associate of Arts degree in Music in the United States."

The director determined that the evidence submitted did not establish that the beneficiary has the minimum qualifications for the proffered position and, on August 29, 2002, denied the petition. The director noted that no evidence had been submitted to show that the petitioner's certificate, awarded in the Philippines, is the equivalent of an associate's or bachelor's degree awarded in the United States.

On appeal, counsel recites the beneficiary's coursework and notes that an educational evaluator had stated that the coursework is equivalent to that required for an associate of arts degree in the United States.

Counsel has demonstrated that the beneficiary's coursework is sufficient to qualify her for an associate's degree, if one were available from the University of the Philippines at Diliman. Counsel has also demonstrated that the beneficiary received a certificate in music awarded by the University of the Philippines at Diliman.

Although the regulations at 8 C.F.R. § 204.5(l)(2) and (3)(ii)(C) require a United States baccalaureate degree or "an equivalent foreign degree" for a professional, there is no similar regulatory requirement for establishing that a beneficiary meets the educational requirements for a skilled worker. In this case the requirement for classification as a skilled worker are two years of experience and an AA degree in Music. Although an educational evaluator has not specifically stated that the beneficiary's Certificate in Music is the equivalent of a United States AA degree, the evaluator has twice concluded that the beneficiary has taken the coursework necessary for an AA in Music in the United States.

The petitioner has established that the beneficiary meets the educational and experience requirements of the labor certification.

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 met that burden.

ORDER: The appeal is sustained, and the petition is approved.