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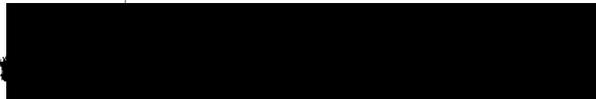
U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 060 52402 Office: VERMONT SERVICE CENTER Date:

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:

This is the decision of the Administrative Appeals Office in your case. All materials 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 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 is a dance school. It seeks to employ the beneficiary as a ballet teacher/choreographer 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 ground that the proffered position does not qualify as 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.

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 is 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) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B and counsel's appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, a dance school with six employees, is seeking to employ the beneficiary as a ballet teacher and choreographer. In a letter accompanying Form I-129 the petitioner's owner/director indicated that the beneficiary was qualified for the job by virtue of his formal education, which includes a diploma from the State School of Ballet in Gdansk, Poland, on June 21, 1976, and his professional experience since then in Poland (1976-82) and Canada (1982-present). In response to the RFE the petitioner submitted a company brochure, an internet job posting of the proffered position, a list of employees, and an evaluation of the beneficiary's credentials.

The director determined that the proffered position did not meet the statutory and regulatory requirements of a specialty occupation. In particular, he cited the petitioner's internet job posting for the position, which did not specify that a bachelor's degree was required, and the petitioner's list of employees and their educational credentials, which included a statement indicating that there were "no existing conditions or prior requirements for a ballet teaching position."

On appeal counsel asserts that the proffered position is highly specialized and does require a bachelor's degree or its equivalent in dance training. According to counsel, the petitioner posted a simple internet advertisement of the position in hopes of attracting numerous responses, and thereafter intended to determine whether applicants had the required degree. Counsel also explained the petitioner's statement on the employee list – that there were no existing conditions or prior requirements for a ballet teaching position – as intending to convey the fact that because the position of ballet teacher and choreographer has not previously existed at the dance school there are no previously established educational requirements for the position. Counsel points out that only one of the petitioner's current dance instructors does not have a bachelor's degree.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

The AAO finds that the proffered position fits within the *Handbook's* occupational description of dancers and choreographers, which reads, in pertinent part, as follows:

[Dancers] use a variety of dance forms that allow free movement and self-expression, including classical ballet, modern dance, and culturally specific dance styles. Many dancers combine performance work with teaching or choreography

Many dancers work with choreographers, who create original dances and develop new interpretations of existing dances

Many dancers stop performing by their late thirties because of the physical demands on the body. However, some continue to work in the field as choreographers, dance teachers and coaches, or artistic directors.

Handbook, 2004-05 edition, at 252-53. The *Handbook* goes on to describe the training and educational requirements of the occupation, in pertinent part, as follows:

Training varies with the type of dance and is a continuous part of all dancers' careers . . . Men often begin their ballet training between the ages of 10 and 15.

Because of the strenuous and time-consuming dance training required, some dancers view formal education as secondary. However, a broad, general education including music, literature, history, and the visual arts is helpful in the interpretation of dramatic episodes, ideas, and feelings

Many colleges and universities award bachelor's or master's degrees in dance, typically through departments of music, theater, or fine arts Many programs concentrate on modern dance, but some also offer courses in jazz, culturally specific ballet, or classical techniques; dance composition, history, and criticism; and movement analysis.

A college education is not essential to obtaining employment as a professional dancer; however, many dancers obtain degrees in unrelated fields to prepare themselves for careers after dance. The completion of a college program in dance and education is essential in order to qualify to teach dance in college, high school, or elementary school. Colleges and conservatories sometimes require graduate degrees, but may accept performance experience. A college background is not necessary, however, for teaching dance or choreography in local recreational programs. Studio schools usually require teachers to have experience as performers.

Handbook, id., at 253. Thus, the *Handbook* indicates that a baccalaureate degree in dance or a related specialty is not the normal minimum requirement for entry into a position as ballet teacher and choreographer at a dance studio. While a bachelor's degree may be viewed favorably by dance schools, it is not routinely required for ballet teachers and choreographers and appears to be less important than experience in the particular dance discipline. Thus, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, the petitioner has not submitted any evidence that a degree requirement in a specific specialty is common to the dance studio industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The record includes a letter from the director of the Moving Word Centre in Ottawa, Ontario, a self-described Christian ministry of communication arts, who asserts that the beneficiary's diploma from the State School of Ballet in Poland would have included a broad liberal arts curriculum. The letter says nothing, however, about whether that degree, or any degree, is commonly required of ballet teachers and choreographers in the industry. Nor does the record demonstrate that the proffered position is so complex or unique that it can

only be performed by an individual with a specialty degree, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner cannot show that it normally requires a specialty degree or its equivalent for the proffered position because it did not previously employ a ballet teacher/choreographer and has no hiring history for the position. According to the employee list previously submitted by the petitioner, three of its employees have a bachelor of fine arts degree, one has a general bachelor of arts degree, and one has a year of college and six years of experience in the performing arts, but no bachelor's degree. Thus, it is clear that the petitioner does not have a history of employing only individuals with baccalaureate degrees in a specific specialty related to dance. Accordingly, the proffered position does meet the third alternative criterion of a specialty occupation.

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties are so specialized and complex that they require a depth of knowledge usually associated with the attainment of a baccalaureate degree in a specific specialty. As far as the record shows, the duties of the ballet teacher/choreographer position at issue in this case do not exceed those normally encountered in the occupational field.

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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