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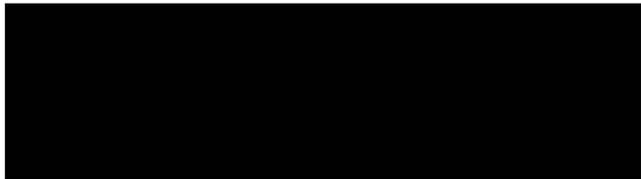
U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 028 52433 Office: NEBRASKA SERVICE CENTER Date: **JUL 14 2006**

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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decisions of the director and the AAO will be affirmed. The petition will be denied.

The petitioner is a private music school that seeks to employ the beneficiary as a music teacher. The petitioner, therefore, endeavors to classify the beneficiary 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 basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation, and the AAO affirmed the director's findings.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence, dated November 13, 2002; (3) counsel's January 31, 2003 response to the director's request for evidence; (4) the director's February 11, 2003 denial; (5) counsel's March 13, 2003 appeal to the AAO and May 1, 2003 submission of supplemental materials; (6) the AAO's February 1, 2005 dismissal of the appeal; and (7) counsels' March 8, 2005 motion to reopen or consider the AAO's decision. The AAO reviewed the record in its entirety before issuing its decision.

On motion, counsel requests that the AAO reopen and reconsider its February 1, 2005 decision. Counsel again contends that the petitioner's proposed position qualifies for classification as a specialty occupation.

Counsel contends that the AAO did not grant proper weight to the advisory opinions submitted as expert testimony: "[I]nstead of a thorough and well[-]reasoned analysis of these expert opinions the Service then impermissibly substitutes its own judgment and virtually ignores the expert opinion by stating that the evidence does not support the petitioner's contentions." The AAO notes that counsel addresses no other findings of the AAO in its dismissal, so the AAO need only address the issue of the advisory opinions here.

Counsel's assertions have failed to overcome the basis of the AAO's dismissal. Counsel submitted three documents as expert testimony: (1) a printout from the website of the National Association of Schools of Music; (2) a letter from [REDACTED], a band director at Woodbury Elementary School, located in Shaker Heights, Ohio; and (3) a letter from [REDACTED], a professor of music at Mount Union College, located in Alliance, Ohio.

While the printout from the website of the National Association of Schools of Music does not state that a bachelor's degree is the normal minimum entry requirement for music teachers in private schools, Mr. [REDACTED] and Ms. [REDACTED] state that such a degree is required to teach music in a private school. However, as noted by the AAO in its dismissal, the Department of Labor's *Occupational Outlook Handbook* states that, while a degree is required for music instruction in public schools, such a degree is not normally required in a private setting:

A degree in music education qualifies graduates for a State certificate to teach music in public elementary or secondary schools. Musicians who do not meet public school music education requirements may teach in private schools and recreation associations or instruct individual students in private sessions.

Thus, the *Handbook* explains unequivocally that a bachelor's degree is not the normal minimum requirement for entry into the proposed position, and its findings do not support the assertion that a

bachelor's degree is required for entry. As stated in the *Handbook*, music teachers in private schools are not required to have a degree in a specific specialty. The petitioner has not distinguished the job duties of its proposed employment from music teachers at other private schools or otherwise proved a degree requirement for the position.

Therefore, the opinions of Mr. _____ and Ms. _____ conflict directly with the *Handbook's* findings, and counsel has submitted no evidence to rebut the industry-wide data contained in the *Handbook*. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, while Mr. _____ and Ms. _____ assert that the duties of the proposed position require the beneficiary to possess a bachelor's degree, an inadequate factual foundation to support their opinions has been established. Neither author notes the location or size of the petitioner. Nor does either author indicate whether they reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. While some music teacher positions in private schools may require a bachelor's degree as a prerequisite for employment, neither author gives sufficient details about the complexity of the details of the proposed position to substantiate their conclusions, which differ from those in the *Handbook*. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The record establishes that the duties of the proposed position do not exceed the scope of the music teacher positions at private schools discussed in the *Handbook*, which do not require a bachelor's degree as a minimum entry requirement. The AAO is not persuaded that the proposed duties are more complex than those of typical music teachers at private schools or that the knowledge required to perform the duties of the position are usually associated with the attainment of a bachelor's degree.

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 not sustained that burden.

ORDER: The AAO's February 1, 2005 decision is affirmed. The petition is denied.