

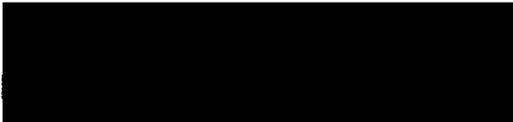


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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536

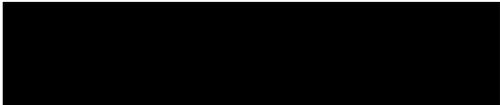


Public Copy

File: EAC 99 278 50346 Office: Vermont Service Center Date:

JUN 8 2001

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)

IN BEHALF OF PETITIONER:



identifying 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

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner seeks to continue to employ the beneficiary as a manager of information systems for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, the counsel states that the beneficiary has already served the company in H-1B status pursuant to an approved petition from October 1996 to October 1999. Counsel further states that an individual must have an extensive background and training in a variety of specialized disciplines to adequately perform the duties of the offered position. Counsel indicates that this beneficiary meets those requirements.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such 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 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, 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.

The duties of the offered position are described as follows:

As Manager of Information Systems, Mr. Chieli will be responsible for performing the following specialized duties:

1. Meet with clients to define and assess their particular needs, intended market, and budget considerations.
2. Evaluate information systems designs in terms of feasibility, marketability, serviceability, practicality, profitability, safety, and suitability.
3. Utilizing the most advanced computer software and technology to design music and interactive productions.
4. Experiment with various sound design techniques and computerized equipment and software to create compositions that function with interactive designs.
5. Meet with production crew to discuss design and explain client's particular requirements.
6. Research, develop and design innovative computer programs to synchronize sound and generate unique effects for clients.
7. Analyze and research new computer applications and software programs that have improved capabilities.
8. Set up and test computer sound generating equipment for clients and in-house design team to insure that the interactive systems are functioning in accordance with strategy.
9. Work with design team including graphic designers, industrial designers, architects, and engineers to produce high quality projects in accordance with client demands.
10. Assist in the preparation and organization of presentations.
11. Administer day-to-day activities of various clients and projects concurrently.

The offered position appears to be that of a computer systems analyst. In its [REDACTED] 2000-2001 edition, at pages 111-112 the Department of Labor states that the usual requirement for employment as a computer scientist is a baccalaureate degree in computer science, information science, or management information systems. It is concluded that the petitioner has demonstrated that the offered position is a specialty occupation within the meaning of regulations. It is noted that the offered position contains elements that are well suited to the employment of a person with both a computer science and music background. Duties that would utilize both skills are listed under duties 3, 4, and 6 above.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately

engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record shows that the beneficiary was awarded a Diploma with a major in Performance in 1993 from [REDACTED] of Music in Boston, Massachusetts. The record shows that from October, 1989 through September, 1990, the beneficiary served as a Network Administrator for Znort s.r.l. in Torina, Italy. In that capacity, he was responsible for administering network computer systems for clients and performed troubleshooting of system(s) and implemented operating systems and software upgrades. An evaluation report dated September 12, 1996 provided by the petitioner found that, based upon education and experience, the beneficiary had attained the equivalent of a bachelor's degree in music performance and computer science from an accredited college or university in the United States. The record shows that the beneficiary has been employed in the offered position from October 1, 1996 until this petition was filed on September 24, 1999. It is determined the beneficiary is qualified to work in the specialty occupation listed by the petitioner on the basis of his educational background and work experience.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.