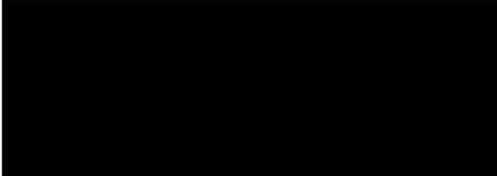




U.S. Department of Justice  
Immigration and Naturalization Service

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



File: EAC 99 006 51836

Office: Vermont Service Center

Date: MAR - 7 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: Self-represented

anyway that failed 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

**PUBLIC COPY**

**DISCUSSION:** The nonimmigrant visa petition was denied by the director of the Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be granted and the previous decisions of the director and the Associate Commissioner will be affirmed.

The petitioner, a law firm established in 1984, seeks to employ the beneficiary part-time for three years as an academic affairs assistant. The director determined that neither the beneficiary nor the position met the requirements for a specialty occupation. On appeal the petitioner argued that the position was a specialty occupation, and the beneficiary qualified for it.

On motion, the petitioner argues that the Service applied the standard appropriate for applicants desiring to demonstrate equivalency with a Doctorate degree for those specialty occupations with such a requirement. The petitioner indicates that the Service should have focused on another section of the same paragraph of the regulations, the one that deals with equivalency with a baccalaureate degree instead. The petitioner states that after the proper standard is applied, the beneficiary clearly qualifies for the offered position and that the visa petition should be approved.

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 Graduation Certificate from the Central Conservatory of Music in Beijing, China in July 1993. The petitioner has provided an evaluation of the beneficiary's education by an evaluation service. The evaluation states that the beneficiary's foreign education is equivalent to two and one-half years of undergraduate study in music education at a regionally accredited institution in the United States. The beneficiary is not qualified to work in a specialty occupation on the basis of education alone.

For the purpose of determining equivalency to a baccalaureate degree in a field related to an offered position, three years of specialized training and/or work experience must be demonstrated for each year of college-level training that the alien lacks. Here, the beneficiary needs four and one-half years of experience in a related field to qualify for employment in a specialty occupation. A job experience certificate was furnished for the record by the petitioner. The certificate states the following:

[REDACTED], Female, was born on April 4, 1957, with college education level, was handling the managerial duties in the Central Conservatory of Music Administration Department and Affiliated Secondary School in the Administration Department from December 1984 to August 1996. Her Job duty is: Piano room management, student registration, tuition collection, student attendance record, file and transcript management, syllabus arrangement for every semester of each grade and the annual nationwide examination grading.

September 1995 worked as an Assistant Researcher in the Academic Affair Department of the Central Conservatory of Music.

From March 1996, worked as Dean of Academic Affairs in the Affiliated Secondary School of the Central Conservatory of Music.

Personnel Department of Central Conservatory of Music  
April 30, 1998

The duties listed above neither establishes the specialized knowledge for them nor the beneficiary's level of theoretical and practical application to accomplish them. 8 C.F.R. 214.2(h)(4)(ii). Also, the beneficiary did not gain her experience working with peers, supervisors, or subordinates who had a degree or its equivalent in the specialty occupation. 8 C.F.R. 214.2(h)(4)(iii)(D)(5). Even giving credit for the time the beneficiary spent working as the Dean of Academic Affairs in the Affiliated Secondary School of the Central Conservatory of Music, the beneficiary had attained far less than the four and one-half

years of required experience on October 5, 1998, the date the visa petition was filed. Therefore, the visa petition may not be approved. See: 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

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 order of February 14, 2000 dismissing the appeal is affirmed.