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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-01-089-51408 Office: Vermont Service Center

Date: 24 APR 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

Public Copy

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, 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 dismissed.

The petitioner is a non profit, Christian based danced company with six employees. It seeks to employ the beneficiary as a modern dance performer for a period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a statement.

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 in 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.

The director denied the petition because the petitioner had failed to establish that the proffered position is a specialty occupation.

On appeal, the petitioner explains that it is a Christian based modern dance company. The petitioner states that it is paramount that the dancers in the company believe, understand, and live the Christian faith. The petitioner further states that At Marah Dance Theatre needs someone who is a professional male dancer who is also an evangelical Christian by faith. The petitioner asserts that these two attributes are an extremely rare combination and, therefore, the proffered position qualifies as a specialty occupation.

The Service does not agree with the petitioner's assertion that the proffered position qualifies as a specialty occupation because it requires a professional male dancer who is also an evangelical Christian. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The [beneficiary] is obligated to attend daily technical instruction, either in the modern dance or ballet style. This is followed by a rehearsal period in which he is required to study company repertoire in preparation for performances and ministry. [The beneficiary] is required to teach classical ballet and partnering classes in the company's trainee program. Furthermore, [the beneficiary] is expected to perfect all technical aspects of the choreographic patterns, and to be engaged mentally and spiritually in the dramatic message of the choreography. Also, he is expected to be able to enunciate the Christian world view in the context of his own cultural and ethnic background.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with the petitioner's assertion that the proffered position requires a bachelor's degree in a specialized area. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 129-131 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a dancer. Men often begin their ballet training between the ages of 10 and 15. Students who demonstrate potential in their early teens receive more intensive and advanced professional training. Training is an important component of professional dancers' careers. Because of the strenuous and time-consuming dance training required, some dancers

view formal education as secondary. A college education is not essential to obtain employment as a professional dancer . . .

In view of the foregoing, the petitioner has not shown that a bachelor's degree in a specialized area is normally a minimum requirement for entry into the field.

In response to a Service request for additional evidence, the petitioner submitted a list of eight former members of [REDACTED] Theatre who have a bachelor's degree in fine arts. However, the petitioner has not submitted any independent evidence to corroborate this assertion.

The petitioner also submitted a copy of a vacancy announcement from its internet web site. The ad states that the company is seeking a male professional dancer, but the ad does not specify that a bachelor's degree in a specialized area is a minimum requirement for the position. While the petitioner may prefer to hire dancers with a bachelor's degree in fine arts, the record does not contain sufficient evidence to show that the petitioner requires a bachelor's degree in a specialized area for its dancers.

The petitioner states that there are only two other Christian dance companies in the United States. The petitioner states that it is, therefore, difficult to establish an industry standard as there is little material available in the way of professional documentation or statistics that can verify the qualification of the proposed position as a specialty occupation. The petitioner submits letters from [REDACTED] addressing the difficulty of finding a male dancer who is also an evangelical Christian.

[REDACTED]

Finding professional male dancers for small professional dance companies is a difficult endeavor. When one of the main requirements is that the dancer be willing to audition for a Christian based company, then the endeavor meets with even more difficulty.

However, [REDACTED] does not state that his company requires that its male dancers have at least a bachelor's degree in a specialized area or that other small dance companies in the United States typically require their dancers to have a bachelor's degree in a specialized area.

[REDACTED] Assistant Professor and Resident Choreographer at Vassar College, states that the beneficiary is a company trainee member who has benefited from the [REDACTED] experience. [REDACTED] further states that the beneficiary is a fine dancer whose position would definitely qualify in the industry as a "specialty

occupation." However [REDACTED] has not explained on what basis the proffered position qualifies as a specialty occupation, nor has he stated that the requirement that dancers have a bachelor's degree in a specialized area is common to small dance companies in the United States. As such, these letters are not sufficient to show that it is common for small dance companies in the United States to require a bachelor's degree in a specialized area for their dancers.

Finally, the petitioner has not shown that the specific duties of the proffered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher 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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.