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U.S. Department of Justice

Immigration and Naturalization Service

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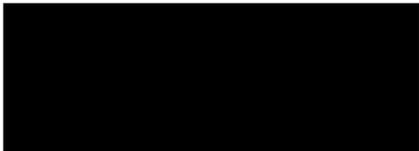
15 OCT 2002

File: LIN-01-262-51376 Office: Nebraska Service Center Date:

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)

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 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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a business engaged in competitive and recreational dance training, instruction, and program development. It has four employees and an approximate gross annual income of \$49,385. The petitioner seeks to employ the beneficiary as an international-style dance program developer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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)(ii), a "specialty occupation" is defined 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 determined that the petitioner had failed to establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specialized area.

On appeal, counsel asserts that the position being offered to the beneficiary is not merely that of a dance instructor. Counsel states that the petitioner wishes to employ the beneficiary to create, plan and lead a new, world-class competitive international-style ballroom dance program. Counsel asserts that the duties of

the job require knowledge of business strategy and planning as well as knowledge of competitive ballroom dancing.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The Service considers the specific duties of the proffered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the proffered position as follows:

[The beneficiary] would be responsible for development of the program, provision of proper instruction, personal instruction of advanced-level competitors, creation and demonstration of competitive routines for advanced-level competitors and the general program, conducting conditioning classes with an emphasis on biomechanics to enhance control, jump and endurance for dance skills, competition preparation, recruitment of competitive students and other duties associated with development of a world-class international-style dance training program.

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 Service does not agree with counsel's assertion that the proffered position of international-style dance program developer requires a bachelor's degree in dance, fine arts, or a related field. In these proceedings, the duties of the position are dispositive and not the job title. The offered position appears to combine the duties of a dance instructor and choreographer with those of a general manager. A review of the Handbook at pages 129-131, finds no requirement of a baccalaureate or higher degree in a

specialized area for employment as a dance instructor or choreographer. Training varies depending upon the type of dance and is a continuous part of all dancers' careers. Many colleges and universities confer bachelor's or master's degrees in dance, typically through departments of music, theater, or fine arts. A college education is not essential to obtain employment as a professional dancer. Completion of a college program in dance and education is necessary to teach dance in college, high school or elementary school. Colleges and conservatories sometimes require graduate degrees, but may accept performance experience. Studio schools usually require teachers to have experience as performers.

Similarly, a review of the Handbook at pages 87-88 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager. Many general managers have a bachelor's or higher degree in business administration or liberal arts. In some industries it is possible for individuals without a college degree to work their way up within the company and become managers. Thus, the petitioner has not shown that a bachelor's degree in business administration or a related field is required for the position being offered to the beneficiary.

In an effort to show that the degree requirement is common to the industry in parallel positions among similar organizations, the petitioner submitted two advisory opinion letters. Samuel Hope, Executive Director of the National Association of Schools of Dance (NASD) states in his letter:

Having read the description of the position as being focused in the creation of a program that includes curriculum instruction, and evaluation, I can say that such educational programs are usually developed and led by an individual with a baccalaureate degree or above in the field of the discipline being taught: dance in this instance.

The petitioner also submitted a list of accredited institutional members. A review of this list reveals that the accredited members of NASD are primarily colleges, universities, and prominent schools of ballet or modern dance such as the Dance Theatre of Harlem, the American Ballet Center, Joffrey Ballet School. There is no indication that any schools of ballroom dance are accredited members of NASD, or indeed that the petitioner is a member of NASD. It appears that Mr. Hope is describing the requirements for program directors at university dance programs or prominent ballet or modern dance academies rather than schools of ballroom dance.

Clarke Blakley, Vice-Principal of Academy of Ballet Internationale, states:

To run a successful program involving athletics and conditioning, the candidate would require other skills such as management and administrative skills, biomechanics, physiology, anatomy, and other related topics. This knowledge is normally acquired in the course of Bachelor Degree studies, and is important in addition of [sic] knowledge and experience in International Style dance.

It is noted that Mr. Blakley does not state that the duties of this job require a bachelor's degree in a specific field of study. Additionally, these letters are insufficient evidence of an industry standard. The writers have not provided evidence in support of their assertions. Furthermore, neither of the writers has indicated the number or percentage of dance program creators who hold such degrees.

The petitioner submitted a job ad for a management trainee position at the Starlite Ballroom, an unaffiliated ballroom dance club in Sunnyvale, California. According to the ad, the successful candidate for this position must have a bachelor's or master's degree in business administration. The ad states, "You'll train at our headquarters with the best sales trainers in the dance business today." This job is not parallel to the proffered position in that it involves marketing rather than creation and development of a dance instruction program.

The petitioner also submitted 17 job ads for dance instructors and similar positions. Sixteen of the advertised jobs are for positions as professors or instructors at community colleges, universities, or high school; the remaining job is for a dance instructor at a children's summer camp for the performing arts. Not one of these jobs involves development of a competitive dance program in a private school of ballroom dance. Furthermore, the ads for professor/instructor positions at colleges, universities, and high schools cannot be compared to the proffered position because such educational institutions require professors or instructors to have at least a bachelor's degree in the subject being taught. Neither counsel nor the petitioner has submitted evidence to show that the same requirement exists for program developers at schools of ballroom dance.

It is noted that the petitioner has also submitted material describing the dance programs at Butler University, the University of Arizona, Jacksonville University, and Montclair State University. While this material shows that colleges and universities have programs leading to a bachelor's degree in dance there is no indication that these dance programs include ballroom dancing. They appear to provide instruction primarily in ballet, jazz, and modern dance. Furthermore, the fact that colleges and universities offer a degree in dance is not pertinent to the

question of whether the duties of this particular job require the services of an individual with a bachelor's degree in a specific field of study.

The petitioner has not submitted any evidence to show that it requires a bachelor's degree in dance or a related field as part of the hiring process.

Counsel argues that the duties of the offered position are more complex than those of a dance instructor or dance program director because the beneficiary must create, develop, and maintain a world-class competitive program in international-style dance. Counsel further asserts that the successful candidate for the job would need expertise in competitive level dance as well as the business, psychological, and sport training necessary to plan and implement a program at an internationally-competitive level. However, as discussed above, neither counsel nor the petitioner has submitted sufficient independent evidence to corroborate these assertions. Thus, the petitioner has not shown that the duties of this particular job are so specialized and complex that they require a bachelor's degree in a specialized area such as dance or fine arts.

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 appeal is dismissed.