

*[Handwritten initials]*

U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**Identifying data deleted to  
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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

[Redacted]

AUG 27 2002

File: WAC-02-098-51762 Office: CALIFORNIA SERVICE CENTER

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)

ON BEHALF OF PETITIONER:

[Redacted]

**PUBLIC COPY**

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

*[Signature]*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a private music school with approximately 26 employees and a gross annual income of \$700,000. It seeks to employ the beneficiary as a music teacher 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 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.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that a music teacher is clearly a specialty occupation that requires a bachelor's degree in music, even to teach basic courses. Counsel provides several examples of petitions approved by the Bureau for music teacher positions.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- 1) Provide private lessons to students, ranging from children to adults, on a one-on-one basis giving extensive instructions targeting in the advanced

- techniques in playing piano, reading of musical notations, history of music, and theories of music;
- 2) Provide group lessons to students, ranging from five to ten years old, on a class basis focusing on the basic music techniques and introduction to concepts of music, such as ear training, solfege signing, keyboard playing, musical notation reading, rhythm activities, ensemble, transposition, improvisation, and music composition;
  - 3) Provide group lessons to toddler students, ranging from eighteen months to four years old, on a class basis emphasizing in developing their interests in music and basic knowledge of music through various games and activities relating to music;
  - 4) Develop course contents and gather suitable teaching materials and textbooks needed to provide clear lessons to the students depending on the emphasis of the course;
  - 5) Work with other music teachers to discuss the development of course contents and any improvements or adjustments; [and]
  - 6) Give students advise [sic] in choosing musical instruments, techniques improvements, and perform opportunities.

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 proffered position is that of a music teacher. The Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, at page 132, finds that a master's or doctoral degree is usually required to teach advanced music courses in colleges and universities, and a bachelor's degree may be sufficient to teach basic courses. A degree in music education qualifies graduates for a State certificate to teach music in elementary or secondary schools. In this instance, the petitioner normally requires its music teachers to hold a baccalaureate or higher degree in music. The beneficiary holds a bachelor's degree and a master's degree in music conferred by U.S. institutions. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

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.