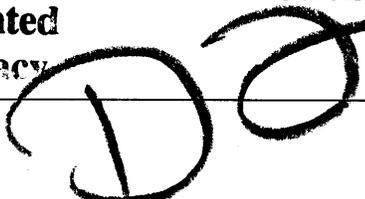


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U.S. Department of Homeland Security

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prevent clearly unwarranted
invasion of personal privacy**

Citizenship and Immigration Services



ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

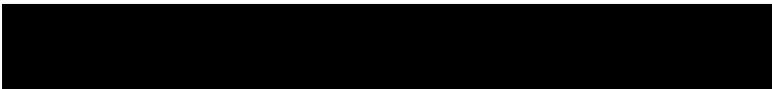


File: SRC-02-275-54141

Office: TEXAS SERVICE CENTER

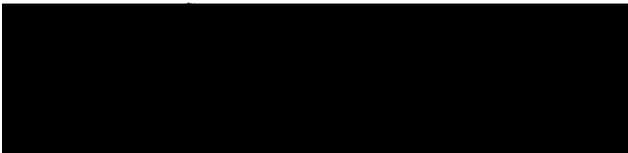
Date: **DEC 08 2003**

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)

ON BEHALF OF PETITIONER:



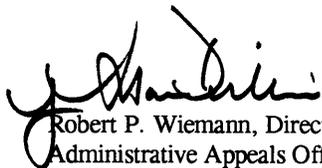
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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.


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 dismissed.

The petitioner is a church with 95 employees and a gross annual income of \$3.5 million. It seeks to employ the beneficiary as a part-time (10 hours per week) 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. The director further found that a previous petition filed by the petitioner on behalf of the beneficiary for the position of "choir director/pianist" had been denied, and that, although the position in the instant petition is that of a music teacher for its music academy, the petitioner had not demonstrated that it actually has a music academy. On appeal, counsel states, in part, that the proffered position is similar to that of a school teacher, and that the proposed duties, which include teaching piano and accompanying choral ensembles, are so complex that a baccalaureate or higher degree in music is required. Counsel also submits a letter, dated December 16, 2002,

from the petitioner's "Director of Music Academy" who states, in part, as follows:

When official approval was given for the establishment of a Music Academy in First Presbyterian Church, I immediately invited [the beneficiary] to become its first piano teacher. He was already the Choir Director at the church's new satellite church on the north side of the city. Since that time other teachers in various areas of music have been added to the faculty. . . .

Counsel's statement on appeal is not persuasive. The AAO 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 AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The Music Academy requires a Music Teacher to teach fundamental principals [sic] in piano performance.

The success full [sic] candidate should be proficient in piano performance, capable of playing as a soloist or as a member of a musical group, such as accompanying choral ensembles or vocal soloist, for the purpose of transcending such skill level. The candidate will teach piano to all interested students. . . .

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 AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in music or a related field. The proffered position is stated to be that of a part-time music teacher to teach piano for ten hours each week in the petitioner's music academy. Although this office agrees that the position of music teacher may be considered a specialty occupation in certain circumstances, the petitioner has not persuasively demonstrated that it has a music academy, and, as such, that a specialty occupation exists for the beneficiary. Although the director raised this issue in his denial, neither counsel nor the petitioner submits any evidence on appeal to demonstrate that a music academy does exist. Furthermore, although the petitioner's "Director of Music Academy" states that the music academy's faculty includes other teachers, the record contains no evidence in support of this claim, or that such teachers hold a baccalaureate degree in music or an equivalent thereof. It is additionally noted that, although the petitioner's name is reflected on the petition as "First Presbyterian Church and Music Academy," the term "Music Academy" does not appear in any of the petitioner's legal documentation. The petitioner has not resolved these inconsistencies.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as music, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the

beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The record contains a letter from an industry expert who states, in part, that a baccalaureate degree in music is required for the position of music teacher. As previously stated, this office agrees that the position of music teacher may be considered a specialty occupation in certain circumstances. In this case, however, the petitioner has not clarified the type of position it is offering the beneficiary or shown that the "Music Academy" exists. Accordingly, it is concluded that the petitioner has not demonstrated that the offered 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 not sustained that burden.

ORDER: The appeal is dismissed.