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

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

**PUBLIC COPY**  
[Redacted]

File: WAC-02-104-51463 Office: California Service Center Date:

IN RE: Petitioner:  
Beneficiary:

[Redacted]

MAR 19 2003

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]

**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

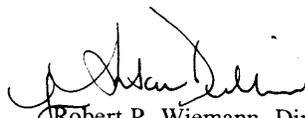
INSTRUCTIONS:

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 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.

  
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 six employees and a gross annual income of \$150,000. It seeks to employ the beneficiary as a part-time piano instructor 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 the position of a private piano teacher requires a baccalaureate degree. On appeal, counsel states, in part, that all professional music teachers must have a bachelor's degree in music. Counsel submits evidence that other private music schools require their music teachers to hold a baccalaureate degree in music. Counsel further states that another H-1B petition was approved for the petitioner for the same position, and that all of its music instructors hold a baccalaureate degree in music.

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

...provide piano lessons to students; plan daily classroom work based on teaching outline prepared for course of study; instruct students in music theory, harmony, score and sight reading, and music appreciation;

play piano to demonstrate musical scale, tones, and rhythm; evaluate students' interests, aptitudes, temperament, and individual characteristics to determine if the students are suitable to be pianists or other instrument players; may occasionally conduct group rehearsals and instruct and coach members in their individual parts, in fundamentals of musicianship, and ensemble performance; critique performance to identify errors and reinforce correct techniques.

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 in music conferred by a Korean institution. A credentials evaluation service found the beneficiary's foreign education equivalent to a bachelor's degree in music from an accredited university in the United States. 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.