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

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

[REDACTED]

File: LIN 01 056 52973 Office: NEBRASKA SERVICE CENTER Date: **MAR 26 2003**

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.

Robert P. Wiemann
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 Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is an opera singer who wishes to employ the beneficiary as her artist's manager 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 and additional documentation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

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 determined the proffered position is that of a general manager, an occupation that does not normally require a baccalaureate degree in a specific specialty.

On appeal, counsel states that the proffered position parallels that of an administrative services manager. Counsel asserts that

the director failed to give due consideration to advisory opinion letters submitted by the petitioner in support of the petition.

Counsel further asserts that a particular occupation can be found to be a specialty occupation where there exists no specific degree in the field.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the proffered position combined with the nature of the petitioning entity's business operations. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position in pertinent part as follows:

[The beneficiary] will acquire and negotiate all professional contracts for recording, operatic, concert and recital engagements. . . . She will also be responsible to arrange all publicity appearances on radio, television and in person, in addition to keeping my websites up to date and maintaining all fan mail and calls. She will be responsible for arranging all travel and lodging for my work, as well as any contacts with operas and orchestras with whom I am working in order to obtain all necessary information such as cast lists, schedules, and payment details. . . . She will be responsible for arranging receptions after premieres and to liaise with photographers and journalists. She is responsible for keeping my books and working in close contact with my US accountant to insure tax returns are properly and timely prepared. This includes obtaining all certificates of income from all international houses, as well as exemption certificates. She will have power of signatory on all my accounts, monitor these accounts, pay all personal and professional bills, and make all daily appointments.

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.

In this case, the petitioner has submitted 14 letters from prominent professionals in the field of classical music including world class opera singers [REDACTED] and [REDACTED] and directors and artistic managers of several world famous operas and symphony orchestras. The petitioner also submitted letters from a faculty member of the Juilliard School of Music and the Senior Vice President, Artists and Repertoire, at Sony Classical. All of these individuals state that a bachelor's degree in music or business is the normal industry requirement for employment as the artist's manager of a world class musical artist. The petitioner, [REDACTED] is a musical artist of that caliber.

In view of the foregoing, it is concluded that the petitioner has submitted sufficient evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations. Therefore, 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 not sustained that burden.

ORDER: The appeal is sustained. The petition is approved.