



U.S. Citizenship  
and Immigration  
Services



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **DEC 22 2004**  
SRC 04 094 50076

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]

IDENTIFYING DATA DELETED TO  
PROTECT THE PRIVACY OF INDIVIDUALS

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

*for Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

*DA*  
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**DISCUSSION:** The director of the Texas Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a performing arts academy providing instruction in dance, acting, and voice to students of all ages. It seeks to hire the beneficiary as a choreographer. The director denied the petition because she determined the proffered position did not meet any of the criteria required for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the request for evidence; (3) the director's denial letter; and (4) Form I-290B, with a statement and additional evidence. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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 further 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.

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.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a choreographer to create and teach original ballet dances to be performed on stage. Evidence of the beneficiary’s duties includes: the Form I-129 and supporting documentation.

In its initial filing, the petitioner stated the duties of the proffered position to be as follows:

- Create original ballet pieces for the stage, composing dance movements, designing a story and interpreting motion, and coordinating dance movements with the music;
- Instruct students in the dances to achieve the desired effect;
- Direct and stage the dance numbers and presentations; and
- Observe performers to determine physical and artistic qualifications, creating original ballet dances to meet their needs and aspirations.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In her denial, the director concurred in the petitioner's description of the proffered position as that of choreographer, but concluded that the occupation did not impose a baccalaureate or higher degree, or its equivalent, as a minimum requirement for entry into the profession. Following a review of the 2004-2005 edition of the *Handbook*, the AAO also concludes that the duties of the proffered position are those of a choreographer and, like the director, finds no baccalaureate or higher degree requirement for entry into the profession. In pertinent part, the *Handbook* states:

The completion of a college program in dance and education is essential in order to qualify to teach dance in college, high school, or elementary school. College and conservatories sometimes require graduate degrees, but may accept performance experience. A college background is not necessary, however, for teaching dance or choreography in local recreation programs. Studio schools usually require teachers to have experience as performers.

Counsel in his response to the director's request for evidence contended that the *Handbook's* statement that, for dancers and choreographers, "a broad general education including music, literature, history, and the visual arts is helpful in the interpretation of dramatic episodes, ideas and feelings" is evidence of a degree requirement. He also submitted two Internet discussions of the profession of choreographer as evidence of the dance skills and theater experience required for choreography. However, despite counsel's assertions, neither the *Handbook's* language nor the Internet materials – which do not discuss any educational requirements for choreographers – are responsive to the degree requirement of the first criterion.

On appeal, counsel references the discussion of choreographers in the DOL's *Occupational Information Network (O\*Net)*. However, the AAO does not rely on the *O\*Net* to determine whether an occupation requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. Like the *Dictionary of Occupational Titles (DOT)* which it replaced, the *O\*Net* is not a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the level of education, training, and experience required to perform the duties of that occupation. The zone classification does not indicate what type of degree, if any, a particular occupation might require. As a result, the AAO is not persuaded by a claim that the proffered position has an *O\*Net* job zone rating of 5.

On appeal, counsel also cites the findings of *Full Gospel Portland Church v. Thornburgh*, 730 F. Supp. 441, 446-447 (D.D.C. 1988) as relevant to this proceeding. However, the 1988 case – which involved the denial of a third preference immigrant visa – dealt with issues unrelated to those now before the AAO. As a result, the AAO does not find the court's findings to be probative for the purposes of this appeal.

To determine whether the petitioner can establish that its position meets the second criterion – that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty – the AAO has reviewed the March 25, 2004 letter submitted by [REDACTED] Director of the Dance Theatre Southwest in Albuquerque, New Mexico, and the April 1, 2004 memorandum

submitted by [REDACTED] Associate Dean, University of Texas at El Paso. In her letter, Ms. [REDACTED] states that almost all her faculty hold “various degrees from universities at various levels” and that those who work in the field of dance need both experience and higher education. [REDACTED] states that he believes that all dance teachers should possess at least a baccalaureate degree and that a bachelor’s or higher degree is now “almost a necessity” to compete for jobs at dance academies. While both of these opinions are relevant to this proceeding, they do not constitute proof of an industry norm. In the absence of independent evidence to document their opinions, [REDACTED] statements are insufficient for the purpose of meeting the petitioner’s burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On appeal, counsel again references the *O\*Net’s* discussion of the occupation of choreographer as evidence of an industry norm. However, for reasons already noted, the AAO does not rely upon occupational information provided by this particular DOL publication to provide proof of a degree requirement in a specialty. Therefore, it concludes that the proffered position does not qualify as a specialty occupation under the second criterion.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner’s ability to meet the third criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas. In the instant case, the petitioner has submitted a job offer description for the proffered position, as well as documentation from its Internet site to establish that it requires its instructors to have degrees or their equivalent.

The AAO has reviewed the documentation provided by the petitioner, as well as that on the petitioner’s website, and finds that the evidence available does not establish that the petitioner normally requires a degree or its equivalent for the position. Although counsel, on appeal, asserts that only one of the petitioner’s instructors does not possess a bachelor’s degree, the AAO does not find this statement to be supported by the evidence before it. A number of the petitioner’s instructors appear to lack academic degrees. While experience may be substituted for an academic degree, the histories provided for these instructors do not provide enough detail for the AAO to be able to determine whether they have acquired the equivalent of an academic degree through a combination of education, specialized training, and/or work experience.

When evaluating academic equivalencies, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of an individual’s training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the training and/or work experience has included the theoretical and practical application of specialized knowledge, and that the experience was gained while working with peers, superiors or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the individual’s expertise in his or her field. 8 C.F.R. §

214.2(h)(4)(iii)(D)(5). In the absence of such evidence, the AAO must conclude that the petitioner has not established that it normally requires a degree or its equivalent for its proffered position.

The fourth criterion requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree in the specialty. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has reviewed the duties of the proffered position, as described by the petitioner in its initial filing, to determine whether they require a higher degree of knowledge and skill than would normally be required of a choreographer or, perhaps, represent an amalgam of jobs that require different skills and qualifications.

On appeal, counsel asserts that the letters from [REDACTED] and Associate [REDACTED] along with the job zone rating of 5 given to the occupation of choreographer by the *O\*Net*, establish that the specialization and complexity of the proffered position require knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a particular specialty. The generic information the *O\*Net* provides does not respond to the requirements of the fourth criterion in which the petitioner must demonstrate that the nature of the duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a particular specialty. The statements made by [REDACTED] and [REDACTED] also fail to identify or address the specific duties of the proffered position and, therefore, cannot serve as evidence of the petitioner's ability to satisfy the requirements of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.