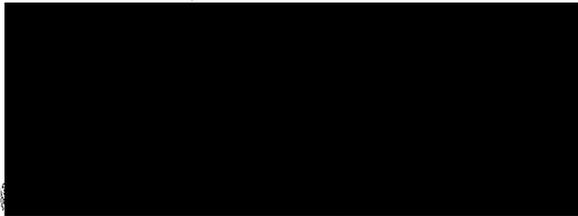


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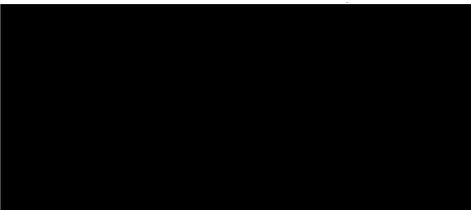
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FILE: LIN 02 125 50152 Office: NEBRASKA SERVICE CENTER Date: MAY 07 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a cultural center that promotes musicians, artists, and writers. The petitioner seeks to employ the beneficiary as a music director, and so endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the petitioner had failed to establish that the proffered position is a specialty occupation. On appeal, counsel submits a brief and additional evidence. Submissions of "new evidence / additional evidence" on appeal include evidence of the educational credentials of two music directors of organizations asserted to be similar to the petitioner, namely: the petitioner's parent company in Barcelona, Spain, and The Music Offering, in Evanston, Illinois. This evidence indicates that: (1) the music director of the Spanish enterprise has attained the "Title of Advanced Degree in Piano" on completion of his studies at the Higher Level Conservatory of Music of the Liceu in Barcelona; and (2) the music director of The Music Offering holds a master of arts degree in music from the University of Houston.

As discussed below, the AAO has determined that the petitioner has established that the proffered position is a specialty occupation.

In reaching this determination, the AAO reviewed the entirety of the record, which includes: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's RFE; (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, and the additional documentary evidence attached to the brief.

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.

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 criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner's response to the RFE indicates that the beneficiary would spend 20 per cent of his worktime coordinating musical presentations at the cultural center; 20 per cent creating music programs; 10 per cent researching, auditioning, and selecting talent; and 5 per cent overseeing rehearsals. The program brochures in the record indicate that these endeavors would all be in the classical music milieu. These facts in particular, in conjunction with the evidence as to the petitioner's mission and the educational credentials of the music director in the petitioner's companion company in Spain, establish that the proffered position as a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that is, as one for which a baccalaureate or higher degree or its equivalent in music or music performance is a minimum requirement for entry.

The AAO also found that the beneficiary is qualified to serve in the pertinent specialty occupation, by virtue of the educational evaluation by International Credentialing Associates to the effect that the beneficiary's degree awarded by the Russian Academy of Music is equivalent to a U.S. master of arts degree in performing arts with a major in trombone (Exhibit 5 of the petitioner's response to the RFE). This document meets the standard at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) for qualifying a beneficiary who holds a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The appeal will be sustained because the evidence of record establishes that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

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.

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