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U.S. Citizenship
and Immigration
Services



FILE: WAC 02 233 55421 Office: CALIFORNIA SERVICE CENTER Date: SEP 01 2004

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:



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.

Mai Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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 dismissed. The petition will be denied.

The petitioner operates a coffee shop that displays artwork and provides educational opportunities in art to the general public. It seeks to employ the beneficiary as an art teacher, and 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 on the basis that the offered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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 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 further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 are 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 record of proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an art teacher. Evidence of the beneficiary's duties was included with the I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would: teach four-week art classes in such subjects as - Drawing 1 (Charcoal, black and white) where students will learn lines, values, and compositions by drawing from basic forms like cubes and cones to complex forms like still life and figures - Drawing 2 (Pastel Colors) where students will add to the knowledge and techniques they have mastered in Drawing 1, and learn the color wheel, warm/cold color concepts and will practice those concepts and techniques - Contemporary Art (Conceptual Art and art history since 1900) where students will learn art history from 1900 to the present and make art pieces responding to what they have learned - Craftwork Class where students interested in decoration and home design work will learn design/decoration using painting/sculpture and drawings on furniture and making of objects of art; organize schedules for various art classes; prepare class texts; interview students and assign them to classes that best suit their abilities and needs; teach elements of color, light, space, volume, tone, texture, and composition through still-life, landscape, and invented motifs. The beneficiary will devote 30 percent of his time to class preparation, 60 percent to teaching various classes, and 10 percent to assessing students' work by way of input and critique of work product. The petitioner requires a minimum of a bachelor's degree in fine arts for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Specifically, the director found that the proffered position was essentially that of an artist.

On appeal, counsel indicates that the offered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) and qualifies as a specialty occupation.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. Contrary to the finding of the director, the duties of the proffered position are not those of an artist, but of an art teacher who will provide instruction in classes taken for purposes of self-enrichment. This position is not one teaching in a traditional classroom setting, but in a public forum open to students who wish to learn about various art

forms and techniques. Self-enrichment teachers teach courses that students take for pleasure or personal enrichment, and are not usually intended to lead to a particular degree or vocation. The majority of self-enrichment classes are relatively informal and nonintensive in terms of instructional demands. Many of the classes are largely hands on, requiring students to practice doing things themselves in order to learn. In such classes, a teacher will demonstrate methods or techniques for the class and subsequently supervise students' progress as they attempt to carry out the same or similar tasks or actions. Many classes that self-enrichment educators teach are shorter in duration than classes taken for academic credit, with some finishing in from one or two days to several weeks (the classes the beneficiary would teach are designed to last four weeks). The *Handbook* notes that the main qualification for self-enrichment teachers is expertise in their subject area. In some cases a portfolio of one's work may be required. For example, to secure a job teaching a photography course, an applicant would need to show examples of previous work. Some self-enrichment teachers are trained educators or other professionals who teach enrichment classes in their spare time. In some disciplines, such as art or music, specific teacher training programs are available. There is no requirement, however, that a self-enrichment teacher have a baccalaureate or higher degree as a minimum requirement for entry into the position. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations and in support of that proposition submits job advertisements for art instructors/teachers. The advertisements are not, however, for parallel positions with organizations similar to that of the petitioner. The advertisements are for teaching positions with public school systems and in college settings. The petitioner would offer art classes in a coffee shop. The advertisements are, therefore, of little evidentiary value with regard to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree or its equivalent for the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The duties of the proffered position appear to be routine for art classes taught for the purpose of self-enrichment. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

As previously stated, an H-1B alien is coming to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). In this case, the petitioning entity states that it is a coffeehouse with art on the walls, and submits copies of its menus. Although the petitioner claims that it will employ the beneficiary as a full-time art teacher, there is no evidence that it has classroom space, a curriculum, a fixed class schedule showing the length of each class, the names or number of proposed students, or any other evidence that the petitioner is currently or will hold art classes. In fact, the petitioner's February 20, 2001 commercial lease agreement confirms that the petitioner is authorized to use the premises only as a coffee shop. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). There is no evidence in the record establishing that the petitioner will employ the beneficiary as an art teacher. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has failed to establish that the proffered position of art instructor

actually exists, and therefore, that the proffered position is a specialty occupation.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.