



U.S. Citizenship
and Immigration
Services

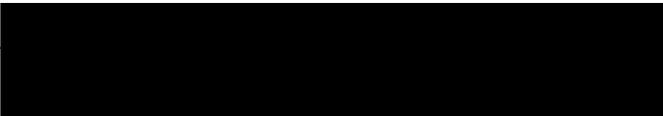
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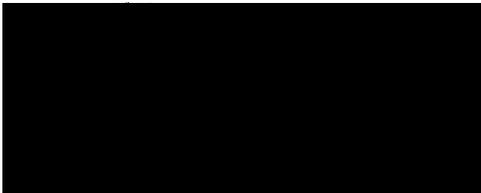
DZ

FILE: WAC 03 231 53727 Office: CALIFORNIA SERVICE CENTER Date: **AUG 02 2005**

IN RE: Petitioner: 
Beneficiary:

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.

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

DISCUSSION: The director of the 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 religious organization that seeks to employ the beneficiary as a parish music director. The petitioner, therefore, endeavors to classify the beneficiary 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief and previously submitted evidence.

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.

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 record of proceeding 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a music director. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail participating and overseeing the rehearsals of musical groups (string, orchestra, brass band, mixed choir, youth choir) within the church and special performances for festivals and other community celebrations; training individuals in playing musical instruments demonstrating scales, chords, rhythms, and tones; writing musical compositions; preparing musical programs for church services; repairing and maintaining musical instruments; and leading musical groups and the congregation in participating in church services. The petitioner further stated that the proposed position requires a bachelor's degree in music or its equivalent.

The director determined that the beneficiary's duties reflected those of musicians, singers, and related workers as those occupations are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that these occupations do not require a bachelor's degree in a specific specialty. The director stated that the proposed duties and stated level of responsibility did not indicate complexity or authority that is beyond what is normally encountered in the occupational field; and that the evidence of record is not persuasive in showing that the job offered could not be performed by an experienced person whose educational training falls short of a baccalaureate degree. The submitted evidence, the director stated, did not show that the petitioner normally requires a baccalaureate or higher degree for the proposed position; or that a degree requirement is common to the industry in parallel positions among similar organizations. The director also found the beneficiary unqualified for the proposed position.

On appeal, counsel states that the director misinterpreted the *Handbook* statement about the qualifications required for a musician: it indicates that a bachelor's degree is the minimum requirement for entry into an occupation involving music instruction. Counsel refers to and asserts that the submitted evidence evinces that the beneficiary qualifies for the proposed position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

First the AAO considers 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; 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 often considered by CIS when determining these criteria include: whether the *Handbook* reports that 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely refers to the *Handbook* for the duties of particular occupations and the education, training, and experience normally required to enter into and advance within the occupations.

The *Handbook* discloses that the beneficiary's duties are encompassed within the occupational classification entitled "musicians, singers, and related workers." The beneficiary will write musical compositions. The *Handbook* describes composers as creating original music such as symphonies, sonatas, or popular songs. In the *Handbook*, a music director conducts, directs, plans, and leads instrumental or vocal performances by musical groups, such as orchestras, choirs, and glee clubs; they audition and select musicians and singers, and lead choirs and glee clubs. Arrangers transcribe and adapt musical compositions to a particular style for choral groups, individuals, orchestras, or bands. Similar to these occupations, the beneficiary will oversee rehearsals of musical groups and choirs, and prepare musical programs for church services.

According to the *Handbook*, employers do not require a baccalaureate degree for this occupational classification; it indicates:

Musicians need extensive and prolonged training to acquire the necessary skills, knowledge, and ability to interpret music. . . . Formal training may be obtained through private study with an accomplished musician, in a college or university music program, or in a music conservatory. . . . The National Association of Schools of Music accredits nearly 600 college-level programs in music. Courses typically include musical theory, music interpretation, composition, conducting, and performance in a particular instrument or in voice. Music directors, composers, conductors, and arrangers need considerable related work experience or advanced training in these subjects.

Many colleges, universities, and music conservatories grant bachelor's or higher degrees in music. A master's or doctoral degree is usually required to teach advanced music courses in colleges and universities; 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 public elementary or secondary schools. Musicians who do not meet public school music education requirements may teach in private schools and recreation associations or instruct individual students in private sessions.

The excerpt from the *Handbook* reveals that a baccalaureate degree is not required for positions within the occupational classification entitled "musicians, singers, and related workers." The *Handbook* statement that "a bachelor's degree may be sufficient to teach basic courses" closely relates to the clause "[a] master's or doctoral degree is usually required to teach advanced music courses in colleges and universities." Thus, the clause "a bachelor's degree may be sufficient to teach basic courses" relates to teaching in colleges and

universities; therefore, counsel interprets it out of context by asserting that it indicates that a bachelor's degree is the minimum requirement for entry into any occupation involving music instruction. Because the petitioner is a religious organization, not a college or university, the beneficiary's duty to train others - as well as the other duties set forth in the job description - would not require baccalaureate-level training.

Based on the above discussion, the petitioner fails to persuasively establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree, or its equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position.

No evidence establishes the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a specific degree requirement is common to the industry in parallel positions among similar organizations; or alternately, shows that the proposed position is so complex or unique that it can be performed only by an individual with a degree. Again, the duties of the proposed position are similar to those of music directors, arrangers, and composers, which are occupations that the *Handbook* reveals do not require a baccalaureate degree.

No evidence establishes that the petitioner normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The *Handbook* shows that the duties of the proposed position are similar to those of music conductors, composers, and arrangers. No evidence in the record suggests that the proposed position rises above the level of these occupations, which do not require a baccalaureate degree in a specific specialty.

As related in the discussion above, 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.