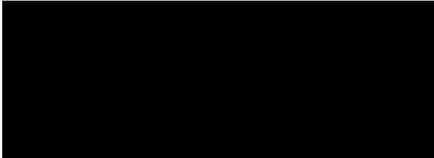


Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



DZ

FILE: WAC 03 233 53136 Office: CALIFORNIA SERVICE CENTER Date: DEC 19 2005

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.

Robert P. Wiemann

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 dismissed. The petition will be denied.

The petitioner is a Montessori school that seeks to employ the beneficiary as a part-time music teacher. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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.

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 part-time music teacher. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 8, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to job duties described in the

petitioner's May 18, 2004 letter, the beneficiary would perform duties that entail: planning music selection according to content, genre, instructional strategies, assessment, and appropriateness; planning daily classroom work; instructing students in music theory, harmony, score and sight reading, composition, and music appreciation; providing individual or group vocal and instrumental lessons using technical knowledge, aesthetic appreciation, and prescribed teaching techniques; teaching music theory and history; teaching instrumental and vocal music; evaluating the students' interests, aptitudes, temperament, and individual characteristics to determine a suitable beginner's instrument; singing or playing instrument to demonstrate musical scales, tones, and rhythm; participating in recommended training programs, conferences, and courses related to professional growth; and discussing students' behavior and learning achievement with parents. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in education or music and a Montessori education certificate.

The director found that the proffered position, which is that of a private music teacher, was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is a schoolteacher of music, and is not a private music teacher. Counsel states further that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 7, and that the Montessori Academy requires its teachers to have a bachelor's degree, as a minimum, and certification from the Association Montessori Internationale (AMI).

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.

The AAO turns first 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; 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position, which is that of a part-time Montessori music teacher, is a specialty occupation. The petitioner's organizational chart reflects that the beneficiary would work in the petitioner's [REDACTED] which, according to the petitioner's brochure, comprises children from two and one half years through five years of age. The petitioner's promotional literature entitled "Music in Education" describes the use of music in a Montessori preschool environment as follows:

1. Rhythm: Beginning with the walking on the line and progressing to other natural expressions of movement, such as running, skipping, and galloping, the child begins to associate certain rhythmic figures with bodily movements. Also, through the use of echoes, both verbal and rhythmic (clapping, tapping knees, snapping), children acquire a vocabulary of simple rhythms.
2. Pitch: Through daily singing of songs, nursery rhymes and [sic] finger plays, children begin to acquire a sense of pitch. The Montessori bell material affords the child the opportunity to hear musical sounds in isolation – to match, grade, and name them. Work with both the pentatonic and diatonic scale patterns gives exposure to different pitch relationships, which are the building blocks of melody.
3. Timbre: Children are introduced to the instruments of the orchestra, with their various tone qualities, and learn the names of the instruments and their respective sounds.
4. Intensity: Children hear pieces with different gradations of volume, a quiet lullaby, a strong march.
5. Form: Children realize through listening to selected music that there is a form to music, just as there is a form (syntax) to language.
6. Culture: As teachers introduce music, whether vocal or instrumental, its place and time of origin is given so children begin to relate music to history and geography.

The record does not indicate that the duties described above require a baccalaureate degree in music education or a related specialty. Furthermore, no evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a preschool teacher.

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for Montessori teachers requiring a bachelor's degree. The advertisements do not indicate that a degree need be in a particular specialty. Montessori certification is listed as preferred, not required, in the majority of the advertisements. Thus, the advertisements do not establish that the position requires a degree in a specialty, as required.

The record also does not include any evidence from professional associations regarding an industry standard for private school teachers of preschool age, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that the petitioner normally requires that its teachers hold a bachelor's degree. The petitioner submits an organization chart listing a bachelor's degree as the educational status of its head of school, one of its directors, and two of its teachers. Another director and teacher on the chart have no educational attainment listed. For those with bachelor's degrees, the specific degree is not listed. The petitioner does not establish that it requires a degree in a specialty for the position. The record, additionally, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.