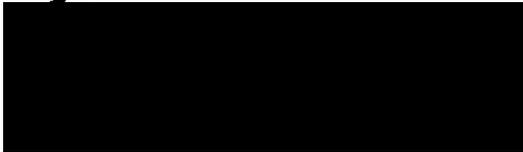




U.S. Citizenship
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Services

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FILE: LIN 04 079 51011 Office: NEBRASKA SERVICE CENTER Date: NOV 10 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:

SELF-REPRESENTED

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, 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 private dance school and is associated with a ballet company and seeks to employ the beneficiary as a choreographer. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant 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, the petitioner submits the Form I-290B and supporting documents.

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 choreographer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company 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 teaching ballet to children from age 10, beginner adults and pre-professional teenagers; at the end of each semester a presentation will be prepared of the class work and choreography learned during the semester; during summer months, participating in master classes and workshops regarding choreography will be given during a special summer program which will be advertised nationally.

The director requested an additional detailed description of the duties to be performed by the beneficiary. The director specified that if the beneficiary will be performing various duties, to indicate the percentage of time the beneficiary will spend performing each duty. The director requested evidence that the proffered position meets one of the above-listed criteria to qualify as a specialty occupation. The director requested evidence to establish that the beneficiary holds an unrestricted state license, registration or certification which authorizes her to fully practice as a teacher and be immediately engaged in that occupation in the state of Michigan, or evidence from the state that a license is not required.

The petitioner replied with a more detailed position description. The petitioner submitted the beneficiary's transcripts with translations and letters from the beneficiary's previous employers. Additionally, the petitioner referred to the Department of Labor's *O*NET* as evidence that a bachelor's degree is the minimum formal education required for this occupation. The petitioner submitted a letter from an artistic director of a dance project. Finally, the petitioner submitted evidence from the Michigan Department of Career Development that a license is not required in a non-degree private school, such as the petitioner.

The director denied the petition and noted that a reference to the online database of occupations known as the *O*NET* is not enough to establish that an occupation is a specialty occupation. The director noted that the classification used and its designation "professional and kindred" are not directly related to membership in a profession as defined in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32) or to membership in a specialty occupation. It is not a gauge of education, but of training and occupational preparation. The director found that the petitioner has not established that it normally requires its choreographers to possess at least a bachelor's degree. The director noted that the petitioner asserted that it employed a choreographer who holds a bachelor's degree in fine arts, but that the petitioner did not provide a copy of the employee's diploma. The director did not conclude that a baccalaureate degree in dance education is the minimum requirement for entry into the profession within the industry. The director noted that the duties of the proffered position are like those found under dancers and choreographers in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director noted that the *Handbook* indicated that there is no requirement of a baccalaureate degree in a specialized area for employment as a choreographer in a dance studio, only in a college, high school or grade school program. The director found that the petitioner did not establish that the proffered position meets one of the above listed criteria; therefore it is not a specialty occupation.

On appeal, the petitioner asserts that it requires all its teachers and choreographers to have a college degree. The petitioner notes "private dance schools without an academic program do not need teachers to be degreed that is true, but the majority of schools affiliated with companies today do require a teacher to be degreed as I do." The petitioner asserts that during the last 20 years it has exclusively employed degreed personnel.

The AAO notes that the *O*NET* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. Additionally, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, 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. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. The DOL's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because it has a specific job zone in the *O*NET*.

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 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 "dancers and choreographers." According to the *Handbook*, many dancers work with choreographers, who create original dances and develop new interpretations of existing dances. Because few dance routines are written down, choreographers instruct performers at rehearsals to achieve the desired effect. In addition, choreographers often are involved in auditioning performers.

The *Handbook* reveals the following about the educational and training of dancers and choreographers:

A college education is not essential to obtaining employment as a professional dancer; however, many dancers obtain degrees in unrelated fields to prepare themselves for careers after dance. 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. Colleges 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 recreational programs. Studio schools usually require teachers to have experience as performers.

Choreographers typically are older dancers with years of experience in the theater. Through their performance as dancers, they develop reputations that often lead to opportunities to choreograph productions.

As noted above in the *Handbook*, employers do not require a baccalaureate degree for this occupational classification. Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the choreographer position.

The petitioner has not provided evidence to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner states that the majority of dance schools associated with programs require teachers with degrees, yet provided no evidence to support its statement. 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)). This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. Consequently, the petitioner's statement fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the proffered position is performed by choreographers, a position that does not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position. The petitioner asserts that it has previously required a bachelor's degree for the position of choreographers. In support of its assertion the petitioner submitted two biographies of associate professors of dance and an affidavit from the professors. This affidavit indicates that the two associate professors have been invited to choreograph a work for the Kalamazoo Ballet and to teach Saturday Ballet Classes for the petitioner in January 2005. Additionally, the petitioner submits a letter from August Tye who stated that she has a bachelor's degree in Fine Arts and has worked as a teacher and choreographer for the petitioner. The evidence submitted is insufficient to establish that the petitioner normally requires a specific degree or its equivalent for the position. The petitioner did not submit proof of employment such as an employment contract or payroll documentation for August Tye. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Additionally, the two associate professors have not yet taught at the school and the affidavit indicates that they will teach there in the future. The petitioner's intention to hire degreed individuals in the future does not establish its past practice of doing so.

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. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties parallel those in the *Handbook* for a choreographer, an occupation that does not require a specific baccalaureate degree. The petitioner has not submitted evidence that the duties of the proffered position are more complex than what is the normal industry wide minimum requirement for entry into the occupation. The evidence of record is insufficient to show that the job offered could not be performed by an experienced individual whose educational training falls short of a baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Beyond the decision of the director, the AAO notes that the petitioner did not submit an educational evaluation as required by the regulation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree. As the proffered position is not a specialty occupation, the beneficiary's qualifications need not be addressed.

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.