

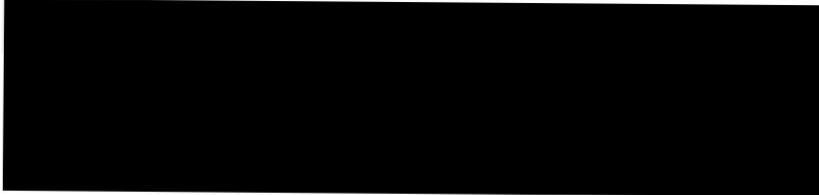
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U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 208 51938 Office: VERMONT SERVICE CENTER Date: JUN 02 2006

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.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
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 dance studio that seeks to employ the beneficiary as a dance instructor/specialist and 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 position is not a specialty occupation. On appeal, the petitioner submits a letter 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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B with accompanying letter. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a dance instructor/specialist. Evidence of the beneficiary's duties includes: the Form I-129, the response to the RFE, and the Form I-290B notice of appeal. According to this evidence, the beneficiary would perform duties that entail: teaching classes including private lessons and couples; training instructors; formulating lesson plans, preparing for local, regional, and national dance competition; accounting and bookkeeping functions; conducting program planning and marketing demonstrations of professional shows including fairs, parties, business functions, and celebrity shows; and other related duties. The petitioner stated that the position requires the beneficiary to have a bachelor's degree.

The director noted that the beneficiary appeared to be qualified in the field of business computing but that the proposed position did not require a bachelor's degree in a specific specialty. The director found that the evidence did not establish that the beneficiary would perform duties that qualified at the H-1B level or that the dance studio industry routinely required a bachelor's degree in a specific field of study as a prerequisite for the proposed position.

On appeal, the petitioner states that there is no specific major which can prepare an individual for the proposed position but that the job entails duties that cannot be performed by someone with just a two-year degree.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review, the AAO concludes that the petitioner has failed to establish that its proposed dance instructor/specialist position meets any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine 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 bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* in its consideration of whether or not a position is a specialty occupation and for its information about the duties of particular occupations. Based on a thorough review of the petitioner's position description and the *Handbook*, the AAO finds that the proposed position most resembles the position of a dancer and a self-enrichment teacher at a dance studio. According to the *Handbook*, many dancers combine performance work with teaching or choreography. The *Handbook* indicates that self-enrichment teachers, provide one-on-one instruction in a variety of subjects, including dance, singing, or playing a musical instrument.

To determine whether the position is a specialty occupation, the AAO first turns to the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. The AAO looks at the *Handbook's* discussion of the educational requirements for dancers and self-enrichment teachers to determine whether or not the petitioner has established this criterion. A review in the *Handbook* of the educational requirements for dancers reveals that, because of the strenuous and time-consuming training required, some dancers view formal education as secondary. A college background is not necessary for teaching dance or choreography in local recreational programs. Studio schools prefer teachers to have experience as performers. The *Handbook* reveals the following about the educational requirements for self-enrichment teachers:

The main qualification for self-enrichment teachers is expertise in their subject area, but requirements may vary greatly with both the type of class taught and the place of employment. 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 many self-enrichment fields, however, instructors are simply experienced in the field, and want to share that experience with others.

In some disciplines, such as art or music, specific teacher training programs are available. Prospective dance teachers, for example, may complete programs that prepare them to instruct any number of types of dance—from ballroom dancing to ballet.

The *Handbook* indicates that jobs in these areas do not require bachelor's degrees for entry into the field. As no specific course of study is required for entry into this occupation and those without bachelor's degrees can fill the positions, the petitioner fails to establish that a bachelor's or higher degree in a specific field of study is the normal minimum requirement for entry into the proposed position. Thus, the petitioner has failed to establish that the position is one that qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO turns next to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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 petitioner has not submitted evidence in regards to this criterion. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. As previously stated, CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any bachelor's or higher degree, but one which is *in a specific specialty* that is directly related to the proposed position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. The petitioner indicates that it requires a bachelor's degree, but admits that the degree need not be in any particular field of study. This educational requirement is not enough to establish that the proposed position qualifies as a specialty occupation, as the requirement must be for a specific bachelor's degree directly related to the proposed position. In this case, it means a requirement for a bachelor's degree in dance or a related field. The petitioner submits a list of individuals employed by the petitioner as dance instructor/specialists. These four individuals hold bachelor's degrees in a variety of areas, including mathematics, international relations, and visual design. None of these degrees appear to relate to the proposed position in any way. Thus, the petitioner fails to establish that the position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at

8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 bachelor's or higher degree in a specific field of study. The petitioner does not establish that the proposed position is so complex or unique that only an individual with a bachelor's degree in a specific specialty can perform it. The petitioner also does not establish that the nature of the proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree in dance or a related field. The duties, as described by the petitioner, appear to be the typical duties of a dance instructor at a dance studio, a position which the *Handbook* indicates does not require a bachelor's degree in dance and can be filled by a non-degreed individual based on experience not equivalent to a bachelor's degree in a specific specialty.

The burden of proving eligibility for the benefit sought remains entirely 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.