



U.S. Citizenship
and Immigration
Services

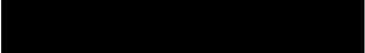
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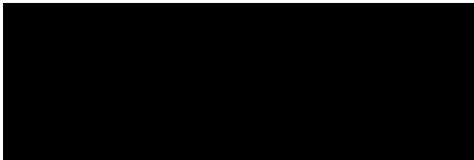
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FILE: SRC 04 067 50061 Office: TEXAS SERVICE CENTER Date: **SEP 30 2003**

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.

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 sustained. The petition will be approved.

The petitioner is a recording studio that seeks to employ the beneficiary as a studio manager/engineer. The petitioner 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 does not qualify as a specialty occupation. On appeal counsel submits a brief and additional information indicating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position 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)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 fields 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 proceeding before the AAO contains: (1) the 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 counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a studio manager/engineer. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Manage recording studio operations including developing and implementing studio policies/procedures, manage daily operations, schedule recording sessions and contact existing and potential new clients;
- Keep logs of recordings;
- Report equipment problems, and ensure that required repairs are made;
- Arrange, mix and orchestrate music;
- Rearrange individual instrumentalists or vocalists using electronic technology, knowledge of music theory, and instrumental/vocal capabilities;
- Transpose music from one voice or instrument to another to accommodate a particular musician in a musical group;
- Adapt musical composition for individual or group style which was not originally written;
- Copy parts from score for performers;
- Determine voice, instrument, harmonic structure, rhythm, tempo and tone balance to achieve the desired effect;

- Transcribe music parts from the musical score written by the arranger or orchestrator for each instrument or voice using knowledge of music composition;
- Confer with producers, performers, and others in order to determine and achieve the desired sound;
- Mix and edit voices, music, and taped sound effects using sound mixing boards;
- Record music and other sounds on recording media, using recording equipment;
- Regulate volume levels and sound quality during recording sessions, using control consoles;
- Reproduce and duplicate sound recordings from the original recording media, using sound editing and duplication equipment;
- Separate instruments, vocals, and other sounds, then combine sounds later during the mixing or post-production stage;
- Set up, test, and adjust recording equipment for recording sessions;
- Synchronize and equalize prerecorded music and sound effects;
- Create musical instrument digital interface programs for music projects; and
- Prepare for recording sessions by performing activities such as selecting and setting up microphones.

The petitioner requires a bachelor's degree in a field which focuses on the practical applications of music engineering, science and technology for entry into the proffered position. The petitioner finds the beneficiary qualified for the position by virtue of his bachelor's degree in music.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for broadcast and sound engineering technicians, with some additional managerial duties and duties requiring knowledge of music composition. The *Handbook* notes that the best way to prepare for a broadcast and sound engineering technician job is to obtain technical school, community college, or college training in electronics, computer networking, or broadcast technology. Beginners learn skills on the job from experienced technicians and supervisors, often beginning their careers in small stations before moving to larger ones. Large stations usually hire technicians only with experience. Audio and video equipment technicians generally need a high school diploma, but many recent entrants to the field have a community college degree or various other forms of postsecondary degrees, although that is not always a requirement. Experienced technicians may become supervisory technicians or chief engineers. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the proffered position. The broadcast and sound engineering duties of the position are routinely performed in the industry by individuals with less than a baccalaureate level education.

The petitioner has established, however, that the duties of this particular position are so 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 will not only perform general managerial duties associated with the operation of a recording studio, as well as duties performed by recording engineers, sound mixers or rerecording mixers, but will use his knowledge of music theory to adapt musical composition for individuals or groups which was not originally written by the music composer. He will transcribe music parts from a musical score for individual instruments and voices using knowledge of music composition. These duties are specialized and complex and would normally be associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), and the position qualifies as a specialty occupation.

The final issue to be considered is whether the beneficiary is qualified to perform the duties of a specialty occupation. The director did not comment on this issue as the petition was denied on another ground. The record is, however, sufficient for the AAO to make that determination. The petitioner has a bachelor's degree in music with a major in music composition technology from Oral Roberts University. That degree is directly related to the duties of the offered position and qualifies the beneficiary to perform the duties of the position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.