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U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 03 028 52433 Office: NEBRASKA SERVICE CENTER Date: JAN 31 2005

IN RE: Petitioner: [redacted]
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:

[redacted]

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 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 private music studio, and seeks to employ the beneficiary as a music teacher. 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 stating 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 music teacher (piano) in a private music studio. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: instruct students in music theory, score and sight-reading, individual and ensemble performance; evaluate students and based on that evaluation create a course of study and prepare a teaching curriculum and outline; test students and critique student's performances; integrate individual lessons into outside musical work that students are involved in; prepare students for concerts and other special performances; and meet with parents of younger students to apprise them of the students progress. The petitioner requires a minimum of a bachelor's degree in music for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The AAO routinely consults the U.S. 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 provided by "musicians, singers, and related workers" as detailed in the *Handbook.* The *Handbook* notes that a master's or doctoral degree is usually required to teach advanced music courses in colleges and universities, but that 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, conservatories, recreation associations or instruct students in private sessions. Thus, it is apparent that a minimum of a bachelor's degree is not the norm for private music instruction. The petitioner has not established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The petitioner did not assert that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, and offered no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner contends that it meets the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) in that it normally requires a degree or its equivalent for the offered position. In support of that contention the petitioner established that its present piano teacher (employed for the past five years) holds a master's degree in music. This submission, however, is insufficient to establish this criterion. The petitioner states that it has been in business for more than fifty years and has instructed thousands of students in various aspects of music. The petitioner did not state than any previous piano teacher had a least a baccalaureate level education, or that it required one, and presented no evidence to establish that fact. The fact that the present piano teacher is degreed does not prove that normally, and historically, the petitioner requires a degree. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

The petitioner contends that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty, and that they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. In support of that assertion the petitioner submitted opinion letters from: Dr. [redacted] Professor of Music, Director, Preparatory Division – Community Music Program, Mount Union College; and [redacted] Department Liaison, Director of Bands, Woodbury Elementary School, Shaker Heights, OH; as well as an advisory statement from the National Association of Schools of Music. The opinions of Dr. [redacted] and [redacted] well taken and essentially indicate that while music is generally taught in elementary and secondary schools, that instruction is limited and presented in the form of group instruction. Students who wish to learn to play an instrument proficiently, and at a level that would prepare them for college/conservatory admission, orchestra participation and other advanced stations requiring an advanced degree of learning in music, almost exclusively gained that level of expertise through private instruction. Both opinions state that this degree of learning can only be imparted by an individual with at least a baccalaureate level education in music. The advisory opinion submitted further indicates that most students entering higher education as music majors have spent many years studying with private instructors and that most would be ill equipped to do so without private instruction. The evidence presented, however, does not sustain the petitioner's contention. A position that teaches piano to students who must acquire that degree of proficiency necessary to audition for admission to conservatories and colleges, or to obtain professional or advanced positions with orchestras or the like, may well require a teacher who exercises the theoretical and practical application of a body of highly specialized knowledge, as opposed to an instructor who teaches music fundamentals to beginning students. The record, however, does not establish this fact. The petitioner states that it prepares students at this advanced level, but offers no evidence in this regard such as, letters from orchestras who employ students taught by the petitioner, or evidence that students taught by the petitioner have been admitted to conservatories and/or universities. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972). As the record now stands, the petitioner has failed to establish that the duties of the proffered position are so unique, specialized, or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate level education, or that they can be performed only by an individual with a degree in a specific specialty. The petitioner has not established the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*2*) or (*4*).

Finally, the petitioner contends that the *Dictionary of Occupational Titles (DOT)* establishes that the position is a specialty occupation because the position is awarded an SVP rating of seven. The petitioner's assertions

are unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.