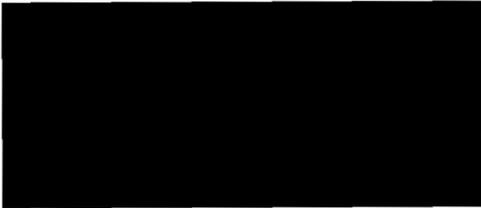


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U.S. Citizenship  
and Immigration  
Services



TCS

FILE: LIN 05 157 52174 Office: NEBRASKA SERVICE CENTER Date: AUG 14 2006

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:



PUBLIC COPY

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, 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 sustained. The petition will be approved.

The petitioner is a non-profit organization that seeks to employ the beneficiary as a special education conductor/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 is not a specialty occupation. On appeal, the petitioner 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 special education conductor/teacher. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 21, 2005 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: conducting developmental assessments of children with cerebral palsy; establishing short and long-term developmental goals and objectives; planning complex Conductive Education curriculum; teaching children to achieve established short and long-term developmental goals; collaborating with parents/guardians to define appropriate activities for children in relation to Conductive Education curriculum; developing and adapting materials and teaching strategies; using special equipment and facilities to teach children with special educational needs; working with other therapists to identify individual special needs, testing, target setting and monitoring; liaising with parents/guardians, medical professionals, social workers, speech and language therapists and educational psychologists; delivering in-service training to parents/guardians; participating in activities such as field trips; assisting in the personal care needs of the children, including teaching them how to feed themselves; preparing written reports concerning individual progress; and creating videos documenting the children's progress. The petitioner stated that a qualified candidate for the position would possess a bachelor's degree in special education with training in Conductive Education.

The director found that the petitioner is not the type of facility that would employ a teacher and that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that the director erred in basing her decision on the petitioner not being a school or educational facility. The petitioner states that it never claimed to be a school, and that all of the documentation it had previously submitted established that, while the position is titled conductor/special education teacher, it is a very specific position and the duties are not those of a teacher in the traditional sense.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is 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. 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. Although the position is titled conductor/special education teacher, and some of the duties of a traditional special education teacher as described in the *Handbook* are similar to those of the proffered position, the position is not a typical special education teacher. As the director noted, the petitioner is not a school or childcare facility that employs teachers. The director failed to take into account, however, that the type of special education provided by individuals like the beneficiary does not occur within a school or educational setting. All of the evidence provided by the petitioner reflects the nature of the position does not place it in a school setting, but rather in a clinical or rehabilitation setting.

The evidence submitted by the petitioner reflects that the training required for the position is a four-year degree from one of the few schools that offer training in conductive education. The proffered position is, therefore, a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The beneficiary has a bachelor's degree in conductor-teacher education that was determined to be equivalent to a U.S. bachelor's degree in exceptional education (motor disabled). She is qualified to perform the duties of the specialty occupation.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of the specialty occupation. 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.