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APR 02 2007

FILE: WAC 04 260 51053 Office: CALIFORNIA SERVICE CENTER Date:

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, 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 library of music content provider with multi-media, TV and film applications. It seeks to employ the beneficiary as a music composer/sound designer. 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 asserts 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)(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.

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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a music composer/sound designer. 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:

- In the area of computer based musical creativity – develop computer-aided analysis; analyze music systems; process digital audio signal, musical acoustics, psychoacoustics, sound analysis and synthesis; and maintain the musical database, data storage and retrieval;
- In the area of music production – write musical compositions; create musical ideas and form, and write within circumscribed musical form; and transcribe into musical notation; and
- In the area of interactivity – perform interactive composition; manage music content; and analyze and edit composers’ work for compliance with specific requirements.

The employment agreement entered into between the petitioner and the beneficiary further indicates that the beneficiary will create, compose, orchestrate, arrange, score, conduct, produce, record, edit and deliver to the petitioner digital content and master recordings. The petitioner finds the beneficiary qualified to perform the duties of the proffered position by virtue of his experience and education which have been determined by Dr. [REDACTED], Chair of the Music Department at Seattle Pacific University, to be equivalent to a bachelor’s degree in music from an accredited college or university in the United States.

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 music composers and arrangers. The *Handbook* groups music composers and arrangers together with musicians, singers, music directors and related workers when discussing training requirements for those positions and notes that formal training for these occupations may be obtained through private study with an accomplished musician, in a college or university music program, or in a music conservatory. The National Association of Schools of Music accredits more than 600 college-level programs in music. Courses typically include music theory, music interpretation, composition,

conducting, and performance in a particular instrument or in voice. Music directors, composers, conductors, and arrangers need considerable related work experience or advanced training in these subjects. The *Handbook* does not indicate, however, that a baccalaureate level education is normally the minimum requirement for entry into the proffered position as training may be obtained through private study as well as from colleges or in a music conservatory. A degree requirement in a specific specialty is not a minimum industry requirement for entry into the offered position. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

While in some circumstances positions for music composers/sound designers may qualify as specialty occupations due to the uniqueness and/or complexity of the duties to be performed, the petitioner has failed to establish the proffered position as a specialty occupation in this instance. The present petition may not be approved because the petitioner has not established that the proffered position actually existed when the Form I-129 was filed, that the petitioner is a going concern, or that the beneficiary will be coming to the United States to perform services in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). The petitioner indicates on the Form I-129 that it employs up to 30 outside staff members and has a projected income of \$600,000. The petitioner did not, however, provide any evidence, such as employee tax records, to establish that it has any employees. Simply going on the 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 190 (Reg. Comm. 1972)). The income tax return submitted by the petitioner is for the year 2002 and lists a total income of \$47,054. The petitioner did not submit a tax return for the year 2003 noting that the corporation did not generate any income for that year. The petitioner did submit a letter from the president of Associated Production Music (APM) indicating that EMI Music Publishing and the petitioner were entering into a joint venture to create music for APM and that a joint venture agreement would be finalized in February of 2005. A copy of the unsigned joint venture agreement was submitted of record. The agreement was not valid, however, when the Form I-129 was filed. The evidence of record does not establish that the petitioner was a going concern when the Form I-129 petition was filed. Consequently, there was no specialty occupation available for the beneficiary and the petitioner has failed to establish that the beneficiary was coming to the United States to perform duties in a specialty occupation. The petition must, therefore, be denied.

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 failed to sustain that burden and the director's determination shall not be disturbed.

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