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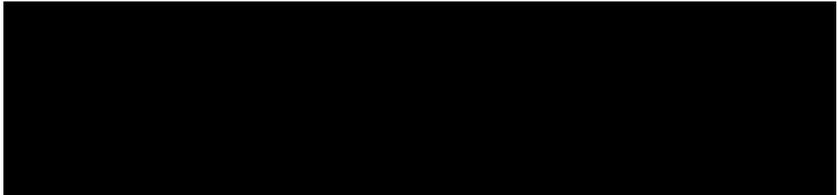
U.S. Department of Homeland Security
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Washington, DC 20536

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U.S. Citizenship
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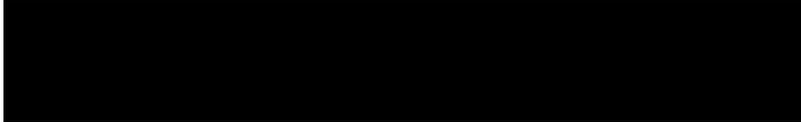
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MAR 30 2004

FILE: EAC 02 118 53878 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

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, 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, a teacher recruitment business, seeks to employ the beneficiary as a math 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits additional information.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In a memorandum entitled "Social Security Cards and the Adjudication of H-1B Petitions," dated November 20, 2001, Citizenship and Immigration Services (CIS) states, in part, as follows:

An H-1B petition filed on behalf of an alien beneficiary who does not have a valid state license shall be approved for a period of 1-year provided that the only obstacle to obtaining the state licensure is the fact that the alien cannot obtain a social security card from the SSA. Petitions filed for these aliens must contain evidence from the state licensing board clearly stating that the only obstacle to the issuance of state licensure is the lack of a social security

card. In addition, the petitioner must establish that all other regulatory and statutory requirements for the occupation have been met.

The record of proceeding before the AAO contains, in part: (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 math teacher. In a letter dated January 24, 2002, the petitioner indicated that it requires a bachelor's degree in the relevant subject matter and a "one year professional degree in Education, which can be foreign equivalent and recognized."

The director found that the beneficiary was not qualified for the proffered position because the petitioner had not submitted evidence that the beneficiary is a licensed public school math teacher in Maryland, or other evidence that he is immediately eligible to practice his profession in Maryland. Specifically, the petitioner had not submitted evidence from the Maryland State teacher's licensing agency clearly stating that the only obstacle to the issuance of state licensure is the lack of a social security card.

On appeal, counsel submits a letter from Sharyn F. Doyle, Supervisor of Teacher Personnel, Division of Human Resources, Anne Arundel County Schools, Maryland, who states, in part, that the beneficiary "would be eligible for provisional (temporary) certification to teach in our school systems."

In its *Occupational Outlook Handbook*, 2002-2003 edition, the Department of Labor finds that all 50 States and the District of Columbia require public school teachers to be licensed. In this case, the beneficiary does not hold a teacher's license from the State of Maryland. As such, in accordance with the November 20, 2001 memorandum described above, the petitioner must submit evidence from the teacher's licensing agency of the State of Maryland clearly stating that the only obstacle to the issuance of state licensure is the lack of a social security card. The letter from the Division of Human Resources, Anne Arundel County Schools, is not sufficient; documentation must come from the licensing authority for teachers that has jurisdiction over Anne Arundel County. As the record does not contain this evidence, the petition may not be approved.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. 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.

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