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**U.S. Citizenship
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FILE: WAC 04 031 50298 Office: CALIFORNIA SERVICE CENTER Date: **MAR 10 2005**

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "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 dismissed. The petition will be denied.

The petitioner is a non-profit private school dedicated to the preservation of traditional Polish language and culture. It seeks to employ the beneficiary as an education specialist. 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 petitioner did not provide requested information, finding that the record did not support approval of the Form I-129 petition. On appeal the petitioner submits additional information establishing its non-profit status and purpose, asking that the petition be approved.

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 an education specialist. 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: teach Polish culture through literature, games, history and the observance of Polish holidays (5 hours per week); teach Polish language (5 hours per week); assess other teachers (3 hours per week); and establish relationships with Polish teachers to formulate a system that would allow the petitioner’s American students to have regular contact with Polish children to enhance the student’s cultural experience (2 hours per week). The petitioner does not state that it requires a baccalaureate level education in any particular discipline for entry into the proffered position, but finds that the beneficiary is qualified in that she possesses the equivalent of a master’s degree in Russian and foreign language (English) from a regionally accredited institution of higher learning in the United States.

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 appear to be those of a teacher who will provide instruction in classes taken for purposes of self-enrichment. This position does not appear to be one of teaching in a traditional educational setting, but in one of a private organization that offers its students an opportunity to learn about their Polish culture and heritage. According to documentation provided by the petitioner, students from kindergarten to young adults attend classes in Polish language, history, geography, music, dance, and religion. Article 19-A of the petitioner’s constitution and bylaws notes that the petitioner does not claim the right to give school credit to pupils attending classes. Classes are held twice monthly on alternate Saturdays for approximately five hours. Based upon this statement, it is unclear how the beneficiary would perform teaching duties and assess other teachers for 13 hours each week.

The *Handbook* indicates that self-enrichment teachers teach courses that students take for pleasure or personal enrichment, and are not usually intended to lead to a particular degree or vocation. The majority of self-enrichment classes are relatively informal and nonintensive in terms of instructional demands. Many of the classes are largely hands on, requiring students to practice doing things themselves in order to learn. In such classes, a teacher will demonstrate methods or techniques for the class and subsequently supervise

students' progress as they attempt to carry out the same or similar tasks or actions. Many classes that self-enrichment educators teach are shorter in duration than classes taken for academic credit, with some finishing in from one or two days to several weeks. The *Handbook* notes that the main qualification for self-enrichment teachers is expertise in their subject area. In some cases a portfolio of one's work may be required. For example, to secure a job teaching a photography course, an applicant would need to show examples of previous work. Some self-enrichment teachers are trained educators or other professionals who teach enrichment classes in their spare time. In some disciplines, such as art or music, specific teacher training programs are available. There is no requirement, however, that a self-enrichment teacher have a baccalaureate or higher degree as a minimum requirement for entry into the position. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner does not assert that a degree requirement is common to the industry in parallel positions among similar organizations and offers no evidence in that regard. The petitioner does state that it requires a minimum of a bachelor's degree for its teachers. The petitioner did not, however, provide any documentation to substantiate that assertion. 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). The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

The duties of the proffered position, though vaguely described, appear to be routine for classes taught for the purpose of self-enrichment. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they 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 has failed to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

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.