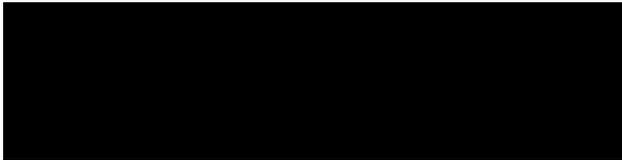


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



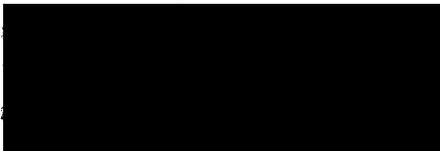
D 1

FILE: LIN 03 028 54150 Office: NEBRASKA SERVICE CENTER Date: FEB 16 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 school that seeks to employ the beneficiary as a Montessori certified pre-elementary teacher. The petitioner, therefore, 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, counsel submits a brief and additional evidence.

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 Montessori certified pre-elementary teacher. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail developing and assisting students with projects and learning activities; working with children in a group and individually; supervising children and maintaining order and a safe environment; following NAEYC's developmentally appropriate practices; using problem solving approaches and positive guidance with children; planning and preparing lessons and activities; and helping parents to further their child's education. The petitioner submitted a letter from the Utah State Board of Education stating that teachers in private schools are not required to possess a teaching license unless they are accredited through the state or the Northwest Association. Although the petitioner indicated that it is desirable for a candidate to possess Montessori teaching experience and certification, the petitioner did not indicate that a candidate must possess a bachelor's degree in a specific specialty.

The director determined that the proffered position was not a specialty occupation. According to the director, because the beneficiary does not have an education tailored for a teaching profession, the petitioner demonstrated that "any" degree qualifies a person for the proffered position. The director found the submitted evidence about the beneficiary's training in the Philippine Montessori and Pre-elementary Educators Association unpersuasive because the petitioner provided no evaluation or explanation about the training. Further, the director noted that the petitioner failed to submit requested evidence that would show the educational and experience level of prior employees in similar positions; the director indicated that the petition could be denied on this specific ground.

On appeal, counsel states that teaching in a Montessori school is a specialty occupation because it requires both theoretical and practical application of a body of highly specialized knowledge. Counsel emphasizes that the beneficiary is qualified for the proffered position, and that the proffered position does not require licensing. According to counsel, any bachelor's degree will not qualify an applicant for the proffered position. Counsel contends that detailed information about the beneficiary's training in the Philippine Montessori and Pre-elementary Educators Association was covered by the document entitled "The Five Learning Areas in Montessori."

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously mentioned, 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 petitioner's job description indicated that it is desirable for a candidate to possess Montessori teaching experience and certification; however, the petitioner did not indicate that a candidate must possess a bachelor's degree in a specific specialty. Consequently, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, Montessori certified pre-elementary teacher.

Given that the petitioner does not require a bachelor's degree in a specific specialty for the proffered position, it cannot establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that its specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Nor can the petitioner establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that the petitioner establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position. Again, the petitioner does not require a bachelor's degree in a specific specialty for the proffered position.

The petitioner also fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) whereby it is required to show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Once again, the petitioner does not require a bachelor's degree in a specific specialty for the proffered position.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.