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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted] Public Copy

File: LIN 99 117 52963

Office: Nebraska Service Center

Date: MAY 15 2001

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[Redacted]

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a private school which seeks to employ the beneficiary as a kindergarten teacher for a three-year period. The director determined that petitioner had not established that the job offered qualifies as a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a letter from the petitioner outlining the credentials of the teachers it employs to teach children three to six years of age. Counsel requests an additional 30 days to provide further evidence. Counsel made this statement on October 9, 1999. No additional evidence has been submitted for the record. Therefore, the record shall be considered complete.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an 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.

The director denied the petition because the information concerning the offered position did not establish that a baccalaureate degree is required to teach children at the ages of three, four, and five, or if an associate degree plus the additional Montessori training is sufficient. On appeal, counsel states that at least one of the two teachers has a bachelor's degree and Montessori training.

The petitioner has provided credentials of two of the four teachers that it indicates are working teaching children that are from three to six years old at the school. One of these teachers is shown to have a Master of Arts degree and the other has a Bachelor of Science degree. Neither credential indicates the field in which the degree was earned. No credentials have been submitted to establish the educational backgrounds of the other two teachers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

establish and maintain a Montessori curriculum and classroom beneficial to each child

observe, plan and interact with each child

maintain records as required by the administration

hold individual conferences with parents

attend in-service workshops/seminars and staff meeting

participate in school activities: parent orientation fall and spring parent/teacher conferences, fine arts night and graduation night, international dinner, parent and child nights.

The record indicates that the beneficiary would be hired as a Montessori Head Teacher, and that such a person needs to meet the educational requirements specified by the state where employment is to be accomplished as well as Montessori credentials.

The duties described, while quite detailed, are not the responsibilities of a teacher as set forth in the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition. Therefore, the Service is not persuaded to classify the position as the specialty occupation of a teacher.

The reason why the Service is not persuaded to classify the offered position as a teacher position concerns the particular duties of the offered position as compared with the duties of a typical teacher position. At page 184 of the Handbook, the DOL states the following about the work of kindergarten and elementary school teachers.

Kindergarten and elementary school teachers introduce children to numbers, languages, sciences and social studies. They use games, music, artwork, films, slides, computers and other tools to teach basic skills.

In the instant case, these elements are absent from the above description of the duties of the offered position. Although these elements should be included in a typical Montessori curriculum, the record does not support such an assumption.

The next issue to be examined is whether the beneficiary is qualified to perform the services of a specialty occupation as a teacher.

The beneficiary holds a bachelor of science degree in commerce earned in 1984 from St. Scholastica's College in the Philippines. The petitioner has not established that the beneficiary's foreign

education is equivalent to a baccalaureate degree conferred by a United States college or university. For example, the petitioner has not provided an evaluation of the beneficiary's educational background by a credentials evaluation service or academic expert. In addition, the petitioner has not shown that this education is relevant to the duties of the offered position. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation based upon education alone.

The petitioner has shown that the beneficiary earned an Early Childhood Credential from the American Montessori Society. However, the petitioner has not established that this achievement is sufficient to overcome the beneficiary's lack of a degree in a specialized and related field of study.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation as a teacher. Accordingly, the decision of the director will not be disturbed.

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.