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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

File: LIN-01-274-54590 Office: Nebraska Service Center Date: JUL 02 2002

IN RE: Petitioner: [redacted]
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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a private residence home school. It seeks to employ the beneficiary as a Judaic and elementary school instructor for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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.

The director denied the petition because the petitioner had not demonstrated that the usual requirement for home tutors is a baccalaureate degree. On appeal, counsel states, in part, as follows:

> The petition was filed for the purpose of obtaining authorization for the employment of the beneficiary as an instructor in Judaic traditions, the Hebrew language and sacred literature, and other subjects for the petitioner's two young daughters . . . This instruction is intended to supplement the more generalized instruction on Jewish customs and traditions that the daughters are currently receiving at the Bernard Zell Anshe Emet Day School. The petitioner is unable to provide the instruction to her daughters herself, as a convert to Conservative Judaism who was not raised in Jewish customs and traditions and the Hebrew language. Prior to his death in Sept. 2001, the petitioner's husband had had primary

> responsibility for teaching Judaism and Hebrew to the daughters at home.
>
> The petitioner seeks to employ the beneficiary to provide instruction in Jewish history and tradition, Hebrew language and literature, and the Torah and other sacred texts to her young daughters. The decision was made to hire the beneficiary because the petitioner determined that she could not provide this instruction herself, after the death of her husband. She was not raised in Jewish culture and tradition and has not been Bat Mitzvahed . . . the instruction that the beneficiary will provide can only be provided by someone with the specialized knowledge and background in elementary education, Jewish cultural and religious tradition and history, and the Hebrew language that the beneficiary possesses.
>
> The instruction that the beneficiary will provide, especially instruction on Jewish texts and prayers in Hebrew, is essential for the petitioner's daughters be raised as Conservative Jews. This instruction is not available through the Bernard Zell Anshe Emet Day School. Although the school provides integrated Jewish and general studies, the school is "neither affiliated to a synagogue nor practice within a particular movement."

The record also contains a letter from the petitioner who states, in part, as follows:

> To remove any possible concerns by the Service that the petition is being filed for the purposes of obtaining a child care worker for my daughters, I would like to note that I already currently employ a full-time child care worker and a child monitor for the children. My petition for [the beneficiary] is being filed solely to further the religious and Hebrew language education of my daughters.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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.

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.

The duties of the proffered position are described in pertinent part as follows:

> Provide instruction on Jewish holidays/traditions/values and Hebrew language as well as tutor reading, language arts, social studies, mathematics, and science for two elementary school age children in private residence.

The proffered position appears to be that of a school teacher. The Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, indicates that a minimum requirement for employment as a school teacher is a bachelor's degree and completion of an approved teacher training program. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

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 sustained that burden.

ORDER: The decision of the director is reversed. The petition is approved.