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U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC-01-014-50123 Office: Vermont Service Center

Date: JUL 05 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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. Wzemann, 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 dismissed.

The petitioner is a daycare center for preschool children with thirty employees and a stated gross annual income of \$650,000. It seeks to extend the employment of the beneficiary as a senior staff member (teacher), 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 and additional documentation.

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 duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. The director also found that the petitioner had not submitted sufficient evidence to demonstrate that it routinely required a baccalaureate degree in a specific field of study as a prerequisite for employment in the offered job. On appeal, counsel argues that the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) shows that a teacher position is a specialty occupation. Counsel submits an online copy of the Handbook excerpt for "School Teachers, Kindergarten, Elementary, and Secondary."

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In a separate letter which accompanied the I-129 petition, the petitioner described the duties of the beneficiary in the proffered position as follows:

As a Senior Staff/Teacher, her duties and responsibilities will include the following. Oversee and instruct staff aide in caring for the children. Instruct

children in activities and discuss according to the curriculum and center policy. Administer achievement tests and evaluate test results to determine aptitude. Assess and record progress. Design and develop curriculum. Plan individual and group activities to stimulate in language, social and motor skills.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The Service does not agree with counsel's argument that the DOL's Handbook shows that a teacher position is a specialty occupation. The proffered position appears to be that of a preschool teacher. A review of the Handbook, 2002-2003 edition, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a preschool teacher as noted below. The Handbook states in part that:

Licensing requirements for preschool teachers vary by State. Requirements for public school teachers are generally higher than those for private preschool teachers. Some states require a bachelor's degree in early childhood education and others require an associates degree, while others may require certification by a nationally recognized authority. The Child Development Association (CDA) credential is the most common type of certification. It requires a mix of classroom training and experience working with children, along with an independent assessment of an individual's competence.

The record does not demonstrate that the petitioner is a public school, but rather a private, for profit institution. While the record contains photocopies of regulatory requirements for teachers within nonpublic schools in Maryland, the state where the beneficiary is employed by the petitioner, these regulations provide no indication that an individual needs to possess a baccalaureate or higher degree in a specialized area for employment as a teacher at any level of education in a private school in Maryland. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation requiring a minimum of a bachelor's or higher degree in a specific academic specialty.

The petitioner has submitted a list of employees, diplomas, and transcripts reflecting that these individuals possess a variety of degrees in diverse academic fields such as French, English, education, and economics. It must be noted that it is not possible to determine whether the individuals with foreign degrees and diplomas possess the equivalent of a baccalaureate or higher degree, as the petitioner has failed to provide independent evaluations of the foreign academic credentials. Furthermore, the record contains no evidence establishing that the degree requirement was a specific condition of each these individual's employment. Consequently, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area, for the offered position.

Counsel presents three advertisements from employers seeking to hire teachers in Maryland as posted in the classified section of the Washington Post's website on the internet for July 31, 2001. However, two of the three advertisements state that candidates for the positions need to possess a bachelor's degree without indicating any requirement that such degree be in a specific area. Furthermore, while the remaining advertisement states that candidates need to possess a bachelor of art degree in Early Childhood Education, it cannot be determined whether the employer is a private institution as is the petitioner or a public school. Therefore, it cannot be concluded that the petitioner has demonstrated that businesses similar to it in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions.

Counsel asserts that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree. However, as noted above, the Handbook does not provide any indication that a baccalaureate or higher degree in a specialized area is required for employment as a preschool teacher at a private institution. As such, it has not been persuasively established that the duties of the proffered position are so

complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific field of study.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the 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 not sustained that burden. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.