



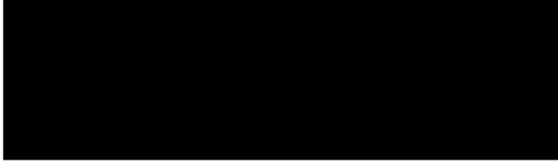
DA

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: SRC 00 283 50004 Office: Texas Service Center Date: JUL 22 2002

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)

IN BEHALF OF PETITIONER



Public Copy

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, Texas Service Center, and has been forwarded to the Associate Commissioner, Examinations, on certification. The director's decision will be withdrawn and the visa petition will be approved.

The petitioner is a non-profit educational institution which seeks to employ the beneficiary as a preschool teacher for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On certification, counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully

practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record shows that the beneficiary earned a Bachelor of Science degree in child development in 1985 from Langston University in Oklahoma. The beneficiary's resume indicates that she earned a "Post graduate Diploma in Guidance and Counseling (DIPCO) M.A. in Guidance and Counseling --- 1995" from the University of Yaounde Advanced Teacher's Training College.

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 offered position are described as:

Mrs. Ngwang is being considered for temporary employment in the position of a Pre-school Teacher/Supervisor. The position carries responsibility of planning and implementing a full day developmentally appropriate class and curriculum for infants, toddlers or pre-school age children in conjunction with the Rosenwald School Director. In addition, she will also be required to supervise and evaluate the degree and certification candidates from the school of Education, who are sent to the Center for field work (practicum) [sic], Mrs. Ngwang will also participate in Divisional and college wide communities and meetings and workshops organized each semester to acquaint the teachers and education students with the application of new technology and teaching methods to enhance effective teaching of the children.

On certification, counsel has provided a letter from the assistant director of the University of Kentucky's Early Childhood Laboratory located in Lexington, Kentucky. The assistant director states that the minimal requirements for a person to obtain a job as Head teacher in its preschool program are a Master's Degree in Child Development or a related field. Counsel has provided a second letter from the executive director of the Good Shepherd Day School also in Lexington, Kentucky. The executive director states that the school only hires professionals as lead teachers with at least bachelor's degrees in early childhood education, or related areas. The petitioner also provides a listing of the names and degrees earned for ten past and three current employees.

In this case, in addition to performing work as a pre-school teacher and supervisor, the beneficiary will supervise and evaluate college students who are degree and certification candidates sent to the Center for field work. Based upon the combination of pre-school and college level teaching duties unique to this position, it is determined the offered position is that of a school teacher. The Department of Labor's Occupational Outlook Handbook, 2001-2002 edition, at pages 200-203 indicates that the minimum requirement for employment as a school teacher is a bachelor's degree and completion of an approved teacher training program. It is concluded that the petitioner has demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

ORDER: The appeal is sustained.