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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: WAC-01-198-50936 Office: California Service Center

Date: NOV 25 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 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. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a non-profit organization providing cultural and educational services. It has 21 employees and a gross annual income of \$173,000. The petitioner seeks to employ the beneficiary as a teacher for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of 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 beneficiary's course work leading to a bachelor's degree in computer science did not include the courses required for an elementary school teacher and the record contains no evidence to show that the beneficiary has any teaching experience.

On appeal, counsel asserts that a bachelor's degree in any major is sufficient for an individual to work as an elementary teacher in a private school. Counsel further asserts that any argument that a specialty occupation requires an individual to have a degree tailored specifically to that field was rejected in Tapis International v. INS, 94 F. Supp.2d 172 (D. Ma. 2000).

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 was awarded a diploma in mathematics by a university in Armenia. The credentials evaluator found the beneficiary's foreign education equivalent to a Bachelor of Science degree in Computer Science awarded by a regionally accredited university in the United States.

A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, finds that although licensure is not required for teachers in private schools, traditional education programs for kindergarten and elementary school teachers include courses designed specifically for those preparing to teach in mathematics, physical science, social science, art, music, and literature, as well as prescribed professional education courses such as philosophy of education, psychology of learning, and teaching methods. The record does not demonstrate that the beneficiary has taken any courses related to a traditional education program for kindergarten and elementary school teachers. Nor does the record demonstrate that the beneficiary has any teaching experience.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her 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.

Counsel's asserts that it was held in Tapis International v. INS, 94 F. Supp.2d 172 (D. Ma. 2000) that a petitioner does not have to require a bachelor's degree in a specific specialty in order for a position to qualify as a specialty occupation. However, the facts in Tapis International are distinguishable from those in this case. The proffered position in the cited case was that of the showroom manager of an interior design firm, an occupation for which no specific bachelor's degree is offered at U.S. colleges and universities. The court reasoned that a petitioner may show that the proffered position requires a bachelor's degree or its equivalent in fields where no specifically tailored baccalaureate program exists. The proffered position in this case is that of an elementary school teacher, a specialty which is offered at many colleges and universities in the United States. Therefore, counsel's argument cannot be considered to have merit.

Beyond the decision of the director, it is noted that the record contains insufficient evidence to demonstrate that the proffered position is a specialty occupation. The petitioner has specifically stated that it requires a bachelor's degree at a minimum for its teachers, but it does not require that the degree be in elementary education. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.