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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

[Redacted]

File: SRC-01-062-51058 Office: Texas Service Center

Date: OCT 31 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:

[Redacted]

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a Montessori school with 10 employees and a gross annual income of \$115,217. It 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 proffered position is a specialty occupation.

On appeal, counsel submits a brief and supporting documentation.

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 determined that the petitioner had not shown that the proffered position is a specialty occupation requiring a bachelor's degree in early childhood education.

On appeal, counsel states that a bachelor's degree is the minimum requirement of a preschool teacher in the State of Texas; that the degree requirement is common in the industry; and that the nature of the duties is so specialized and complex that the knowledge required to perform the duties is normally associated with the attainment of a bachelor's degree. Counsel further states that a bachelor's degree is required for admission to U.S. courses for accreditation by the American Montessori Internationale (AMI), the organization that oversees Montessori teacher training at affiliated institutions on four continents.

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:

Instruct children in activities designed to promote social, physical, and intellectual growth needed for primary school in preschool. Organize children's records in order to provide parents with an accurate assessment of their child's improvement and developmental level. Plan individual and group activities to stimulate growth in language, social, and motor skills, such as learning to listen to

instructions, playing with others, and using play equipment. Prepare charts and graphs designed to follow each student's development. Interact with parents and other clients and perform other administrative functions as required by regulatory authorities. Advise and interact with administrators to plan and assess school curriculum. Develop accurate documentation that complies with company standards.

It is noted that the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 1998-1999 edition, states at page 334:

Other schools require their own specialized training. Montessori *preschool* teachers must complete an additional year of training after receiving their bachelor's degree in early childhood education or a related field.

The proffered position appears to be that of a school teacher. The DOL's 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 the regulations.

The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. It is noted that, although the record contains a certificate from the Association Montessori Internationale (AMI) stating that the beneficiary has completed the required extra year of Montessori training, the record does not contain evidence that the beneficiary's foreign education and work experience are equivalent to a bachelor's degree in early childhood education such as an evaluation by an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion

and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.