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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-01-124-50862 Office: Vermont Service Center

Date: SEP 30 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a child care center with 14 employees and a gross annual income of \$325,000. 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 or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief and supporting 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 petitioner had not established that the proffered position requires the services of an individual with a bachelor's degree in a specific field of study. The director further noted that the beneficiary's bachelor's degree in zoology does not qualify her for the offered position of preschool teacher.

On appeal, counsel states that the State of New York and the New York City Board of Education have mandated that teachers at preschools participating in the Universal Prekindergarten program have a bachelor's degree as well as additional credits in early childhood education. Counsel further states that the beneficiary clearly qualifies for the proffered position since she has an associate degree in early childhood education and has completed half of the course work toward a master's degree in early childhood education.

Counsel's assertions on appeal are not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The Service considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. The

petitioner failed to provide any description of the duties of the proffered position in the initial I-129 petition. On appeal, counsel provides the following description of the job's duties:

- * prepare lesson plans and course syllabus
- * participate in parent-teacher conferences
- * attend monthly staff development meetings with the Board of Education
- * train teaching assistants
- * provide after-school programs which are educational in nature
- * educate parents who have children with developmental or behavior problems
- * provide professional evaluations of children with learning difficulties
- * complete assessments for the New York City Board of Education
- * expand the curriculum to teach math, science and the alphabet
- * insure that the pre-K education is sufficiently structured to provide the children with the educational and organizational skills they will require to succeed upon entering elementary school.

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 failed to establish that any of the four factors enumerated above are present in this proceeding.

The Service does not agree with counsel's argument that the proffered position of preschool teacher requires a bachelor's degree in early childhood education. A review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) 2002-2003 edition, finds no requirement of a baccalaureate or higher degree in early childhood education for employment as a preschool teacher. The Handbook states:

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 associate degree, while others may require certification by a nationally recognized authority. The Child Development Associate (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 indicates that the petitioner is a child care center with 70 children and 14 teachers. In a letter dated February 22, 2001, Ana Diaz, the Director of [REDACTED] states that the petitioner is affiliated with the New York State Universal Prekindergarten program for 4-year-old children, District 22 of the New York City Public School System. On appeal, counsel submits a list all the school districts participating in the Universal Prekindergarten program in the State of New York. Counsel states that these school districts require all preschool teachers to have a "minimal educational background." Counsel also submits the publication "Making a Difference: Questions & Answers About Teaching in the New York City Public Schools." According to this publication, both New York State and New York City require a bachelor's degree for teacher certification or licensure, as well as additional credits in early childhood education, but there is no stated requirement of a bachelor's degree in early childhood education.

Additionally, the petitioner has not submitted any evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner states that it requires a bachelor's degree for the proffered position. In support of this statement, the petitioner submits a vacancy announcement for the proffered position. This announcement states that a bachelor's degree "in any field" is required, along with at least 12 post graduate credits in early childhood education. The petitioner has also submitted the transcripts of its other preschool teacher. That individual holds a bachelor's and a master's degree in English. It appears that the petitioner requires its preschool teachers to have a bachelor's degree, but the record does not contain any evidence to show that the degree must be in a specific field of study.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specialized area.

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.

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 Bachelor of Science (Honours) diploma in Zoology by the University of Dhaka in 1989 and a Master of Science diploma in Zoology in 1992 by the same institution. A credentials evaluator found the beneficiary's foreign education equivalent to a bachelor's degree in zoology from a regionally accredited institution in the United States. The evaluation appears reasonable and will be accepted.

On appeal, counsel states that the beneficiary has also completed an Associate of Applied Science degree in Early Childhood Education. In support of this statement, counsel submits the beneficiary's transcript from Hudson County Community College. A review of the beneficiary's transcript reveals that, while she has completed 39 quarter hours toward her associate's degree, she does not appear to have completed all the course requirements for the degree. The beneficiary's status is identified as: "Placed on warning."

The beneficiary subsequently enrolled in the graduate program at Brooklyn College with a major in early childhood education. As of February 15, 2001, she had completed 18 credits toward a Master of Science degree in Early Childhood Education. It appears that the beneficiary was accepted with conditions and was on academic probation as of the date of issuance of the transcript. The transcript also indicates that the beneficiary may need remedial English courses. The beneficiary clearly had not completed her master's program in early childhood education at the time of filing of the appeal.

While the petitioner has shown that the beneficiary has the equivalent of a bachelor's degree in zoology from an accredited college or university in the United States, that degree alone does not qualify the beneficiary for certification or licensure as a preschool teacher in the Universal Prekindergarten Program in New York City or the State of New York. As counsel himself states on appeal, all preschool teachers in schools participating in the Universal Prekindergarten program in New York City are required to have certification from the State of New York and licensure from the New York City Board of Education. Neither counsel nor the petitioner has provided any documentation to show that the beneficiary has completed her master's degree in early childhood education or has attained New York State certification or licensure in New York City as a preschool teacher. In view of the foregoing, it is concluded that the petitioner has not shown that the beneficiary is qualified for the proffered position.

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.

ORDER: The appeal is dismissed.