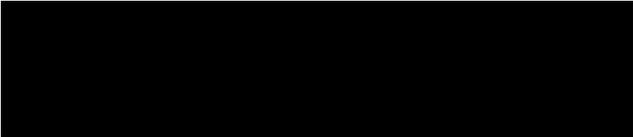


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 MASS. 3/F  
Washington, D.C. 20536



APR 15 2003

File: WAC 01 295 51405 Office: CALIFORNIA SERVICE CENTER

Date:

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)

ON BEHALF OF PETITIONER:



**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

**INSTRUCTIONS:**

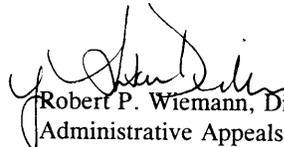
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a non-profit daycare/preschool center located in Los Angeles, California. It has six employees and a gross annual income of \$75,000. The petitioner seeks to employ the beneficiary as a preschool teacher for a period of three years. The director denied the petition on the ground that the proffered position was not a specialty occupation.

The petitioner submitted additional information on appeal. That information discussed the petitioner's philosophy concerning childcare and the duties and responsibilities of the proffered position.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) 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.

The term "specialty occupation" is further 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 field 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.

In the initial petition, the petitioner classified the proffered position as a "Teacher, Preschool". The job responsibilities associated with that position were detailed as follows:

In this position, Ms. Montezuma will be serving the needs of the parents and children of our community. She will teach elemental natural and social science, personal hygiene, music, art and literature to children up to 5 years old, to promote their physical, and intellectual growth needed for primary school in preschool, day care center. She will supervise activities, such as field visits, group discussions, and dramatic play-acting, to stimulate student interest and broaden understanding of their [sic] physical and social environment. She will foster cooperative social behavior through games and group projects to assist children in forming satisfying relationships with other children and adults. She will encourage students to sing, dance, do rhythmic activities, and use art material to promote self-expression and appreciation of esthetic experience. She will instruct children to practice personal cleanliness and self-care. She will instruct alternate periods of strenuous activity with periods of rest or light activity to avoid over stimulation and fatigue. She will observe children to detect signs of ill health or emotional disturbance, and evaluate progress. Furthermore, she will discuss student's [sic] problems with parents.

The director requested additional evidence from the petitioner. Specifically, the petitioner was asked to provide a detailed job description, evidence that the proffered position met the requirements of a specialty occupation, copies of the petitioner's past and present job announcements for similar positions and copies of the beneficiary's school transcripts for courses taken in child development.

The petitioner responded by changing the beneficiary's title to that of a "Preschool Head Teacher." The following job description was presented by the petitioner in response to the director's request:

**Job Description:** As a Preschool Head Teacher, Ms. [REDACTED] will be responsible for coordinating curriculum plans for the day, supervising and supporting assistant teachers and parent providers. As Head Teacher, she will model appropriate techniques for conflict resolution and problem solving. She will ensure a hygienic and safe physical and emotional environment for children. (30 hours per week). Those activities must incorporate each of the following areas of development into the daily/weekly curriculum plan: Dramatic play, Gross motor/climbing structures, Fine motors/manipulatives, Language Development, Music and movement, Tactile play, Math development and Science. She will also supervise snack and lunch set-up and

ensure that each child is offered a balanced, nutritious menu at the school (7.5 hours per week). . . . Additionally, Ms. [REDACTED] must participate in ongoing training and staff meetings offered by the school twice a month. She may also receive training outside of the preschool hours . . . (4 to 5 hours per month). As Head Teacher, she will coordinate parent conferences and meet with parents on an ongoing basis to discuss the progress their child is making at the school and discuss any areas of concern (5 to 10 hours per month). Head teachers meet with a parental liaison regarding staff concerns and issues to be brought up to the Board of Directors. Ms. [REDACTED] is encouraged to attend the monthly Board of Directors meetings (5 to 10 hours per month).

The Director denied the petition on May 29, 2002, on the ground that the proffered position was not a specialty occupation. The director found that the position described reflected the duties of a Preschool Teacher and Child Care Worker.

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 qualify the offered position as a specialty occupation. In the *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at pages 328-329, the Department Of Labor describes, in part, the duties of a childcare worker as follows:

Childcare workers nurture and teach children of all ages in childcare centers, nursery schools, preschools, public schools, private households, family childcare

homes and before-and after- school programs. These workers play an important role in a child's development by caring for the child when parents are at work or away for other reasons. . . . In addition to attending to children's basic needs, these workers organize activities that stimulate the children's physical, emotional, intellectual, and social growth. They help children explore their interests, develop their talents and independence, build self-esteem, and learn how to behave with others. . . . Childcare workers spend most of their day working with children. However, they do maintain contact with parents or guardians through informal meetings or scheduled conferences to discuss each child's progress and needs. Many childcare workers keep records of each child's progress and suggest ways that parents can increase their child's learning and development at home. . . . Most childcare workers perform a combination of basic care and teaching duties . . . .

The petitioner indicates on appeal that the beneficiary will not work in a "childcare worker" position, and that the proffered position is so specialized that a baccalaureate degree in psychology, social work or child development is required. The petitioner notes that many of its students come from broken homes, and some suffer from a variety of emotional and developmental delays. The duties described by the petitioner however, are similar to those listed in the *Handbook*, which require teaching and caregiver skills. The special needs referred to by the petitioner can be found in all childcare/preschool settings. There has been no showing that the petitioner's facility is specialized in nature, or provides specialized services, different from those provided in other child care/preschool facilities. It should further be noted that the beneficiary's college degree is equivalent to a bachelor's degree in philosophy; not psychology, social work or child development, which are the degrees the petitioner alleges are necessary for the position.

The training and qualifications of childcare workers vary widely. Each State regulates licensing and caregiver training, with requirements ranging from a high school diploma to a college degree in child development or early childhood education. Childcare workers generally can obtain employment however, with a high school diploma and little or no experience. *Id.* at 330. The beneficiary has the equivalent of a bachelor's degree in Philosophy from a regionally accredited university in the United States. A baccalaureate or higher degree, or its equivalent, is not, however, normally the minimum requirement for entry into the proffered position. The petitioner has therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Second, 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. Third, the petitioner failed to present any evidence to establish that parallel positions among similar organizations in the industry commonly require a bachelor's degree or its equivalent, or that the subject position is so complex or unique that it could be performed only by an individual with a bachelor's degree. 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 those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, 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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed.