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Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

File: LIN-02-190-55632 Office: NEBRASKA SERVICE CENTER Date: DEC 01 2003

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:

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 Citizenship and Immigration Services (CIS) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a private school (Waldorf teaching system) with two full-time and two part-time employees and an estimated gross annual income of \$128,000. It seeks to employ the beneficiary as an early childhood program director/lead kindergarten 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 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 petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the Department of Labor (DOL) in its *Occupational Outlook Handbook (Handbook)* finds that the requirement by all States for general education teachers to hold a bachelor's degree also applies to kindergarten teachers. Counsel further states that the State of Kansas requires the minimum of a bachelor's degree for the position of a preschool teacher.

Counsel's statement on appeal is not persuasive. The AAO does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[E]stablish and set-up [sic] the kindergarten program. [The beneficiary] will be responsible for creating the curriculum and training the assistants and staff. She will coordinate with the administration all details and requirements of the Early Childhood program's needs and issue reports to the administration and board on the status of the program. She will teach the children academic, social and motor skills, applying the Waldorf training, methods of instruction and philosophy. The duties include preparation of teaching material and method of presentation to the students. The scope of teaching will include music, art (drawing, painting, etc.), physical education, handwork & crafts, drama, etc. The teacher is responsible for the physical, emotional and social development of the children, including instruction in personal hygiene. The teacher conducts meetings with parents to discuss student's progress and resolves any problems, and attends information meetings on Waldorf philosophy and principles. Additionally, [the beneficiary] will conduct interviews with new students and confer with other teachers in regards to the planning of school curriculum.

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 classify the offered position as a specialty occupation.

First, the AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in education or a related field. Although the petitioner lists the proffered position as a kindergarten teacher, the proposed duties are primarily those of a preschool teacher. In its *Handbook*, the DOL describes the duties of a preschool teacher, in part, as follows:

[A] less-structured approach is used to teach preschool children, including small group lessons, one-on-one instruction, and learning through creative activities, such as art, dance, and music.

In its *Handbook*, the DOL describes the duties of a kindergarten teacher as follows:

Play and hands-on teaching also are used in kindergarten classrooms, but academics begins to take priority. Letter recognition, phonics, numbers, and awareness of nature and science are taught primarily by kindergarten teachers.

The petitioner's website www.kansaswaldorf.org/Articles;faq-waldorf.htm describes its kindergarten curriculum, in part, as follows:

Academics are de-emphasized in the early years of schooling. There is no academic content in the Waldorf kindergarten experience (although there is a good deal of cultivation of pre-academic skills), and minimal academics in first grade. Reading is not taught until second or third grade, though the letters are introduced carefully in first and second.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a preschool teacher rather than a

kindergarten teacher. For example, the petitioner states that the scope of the beneficiary's teaching "will include music, art (drawing, painting, etc.), physical education, handwork & crafts, drama, etc." As no academics are involved in the petitioner's kindergarten curriculum, the proposed duties are primarily those of a preschool teacher. A review of the DOL's *Handbook*, 2002-2003 edition, at page 202, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a preschool teacher. It states, in part, as follows:

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.

In view of the foregoing, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as education, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The job listings submitted by the petitioner are noted. Two of the listings are for kindergarten teachers (using the Waldorf method of teaching) for schools in Hawaii and California. Although a bachelor's degree is required, no specific specialty is indicated. A third advertisement for teachers using the Waldorf method of teaching for the State of Illinois specifies that applicants for its parent-child program teacher and its first grade teacher require a bachelor's degree; applicants for its kindergarten teacher, however, require 5+ years of experience teaching in the Waldorf method. In contrast to the job listings for teachers using the Waldorf method, a listing for a Montessori teacher specifies that the applicant must have a bachelor's degree in education or a related field and Montessori

certification. 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.

Counsel's asserts that the beneficiary must hold a baccalaureate degree in accordance with the educational requirements for the State of Kansas. The website www.ed.gov/pubs/RegPrivSchl/kansas.html states, in part, that nonpublic schools in Kansas are not required to be accredited. It further states that there is no certification requirement for teachers or administrators employed at nonpublic schools not accredited by the Kansas State Board of Education. The record contains no evidence that the petitioner is accredited by the Kansas State Board of Education. As such, counsel's assertion is accorded little weight.

Counsel submits an unpublished AAO decision in support of the appeal. While 8 C.F.R. § 103.3(c) provides that Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Furthermore, the petitioner has not demonstrated that the educational requirements of the proffered position are similar to those described in the unpublished decision for a Montessori teacher: "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 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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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.