

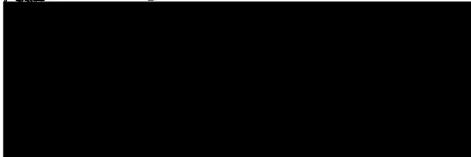
D2

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



File: EAC-01-243-55136

Office: VERMONT SERVICE CENTER

Date: MAY 12 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:



PUBLIC COPY

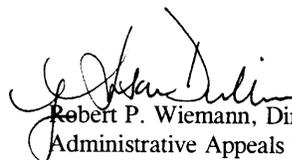
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner contracts and subcontracts for software development and consulting, and provides employee leasing and job placement services. It has three employees in the United States, seven employees in India, and a projected gross annual income of \$1,073,550. It seeks to temporarily employ the beneficiary as a secondary school teacher for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel submits a brief.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined 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 duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. The director further found that the petitioner had not demonstrated that a bona fide job offer actually exists. On appeal, counsel states, in part, that the Department of Labor (DOL) in its *Occupational Outlook Handbook* (*Handbook*) finds that all States require school teachers to hold a minimum of a bachelor's degree. Counsel further states that similar teaching/tutoring organizations in the Washington D.C. metropolitan area have such a degree requirement.

Counsel's statement on appeal is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- (1) To teach one or more subjects to students.
- (2) To instruct students, using various teaching methods, such as lecture and demonstration, and use audio visual aids and other materials to supplement presentations.
- (3) To prepare course objectives and outline for course of study following curriculum guidelines or requirements of State and School.
- (4) To assign lessons and correct homework.
- (5) To administer tests to evaluate pupil progress, record results, and issue reports to inform parents of their child's progress.
- (6) To keep attendance records and maintain discipline in classroom.
- (7) To meet with parents to discuss student progress and problems.
- (8) To participate in faculty and professional meetings, educational conferences, and teacher training workshops.
- (9) To perform related duties, such as sponsoring one or more activities or student organizations.
- (10) To assist pupils in selecting course of study and counseling students in adjustment and academic problems.
- (11) May be required to earn teaching certification from the State of employment.

The petitioner also stated, in part, as follows:

When she comes to U.S. she is expected to attend (as our employee) several interviews with private and/or public school officials who may be interested in hiring her to work for their school system(s). After she passes these personal interviews our Beetit Inc. Agency will contract her out to the best possible school chosen by our company's Board Of Directors.

In response to the director's request for additional information, the petitioner stated that licensure was not a requirement for employment, and submitted the following, revised proposed duties:

- (1) [REDACTED] (My daughter with Learning Disability due to Spina Bifida. [REDACTED] will be entering 9th grade beginning September 2002), for which she will be paid by Beetit, Inc.
- (2) Voluntary Teaching at SATURDAY SCHOOL at Montgomery County Public Schools (for which [the beneficiary] will be paid by Beetit, Inc).

- (3) For the remaining number of hours, [the beneficiary] will be teaching/tutoring the secondary school students at Beetit, Inc., for which she will be paid by Beetit, Inc.

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 Bureau does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in education or a related field. The proffered position is similar to that of a teacher's assistant. In its *Handbook*, 2002-2003 edition, at page 192, the DOL describes the job of a teacher assistant, in part, as follows:

Teacher assistants tutor and assist children in learning class material using the teacher's lesson plans, providing students with individualized attention.

According to the DOL at page 193 of its *Handbook*, educational requirements for teacher assistants range from a high school diploma to some college training. Although a number of 2-year and community colleges offer associate degree programs that prepare graduates to work as teacher assistants, most teacher assistants receive on-the-job training. Thus, 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 shown 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, although the record contains information from other tutorial-related businesses, none of the information is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. The petitioner has not demonstrated that the level of its business activities warrants comparison with such businesses as the Sylvan Training Center. Furthermore, information from the Sylvan Training Center specifies that its teachers must be certified. The petitioner, however, does not require such 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.

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.

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.