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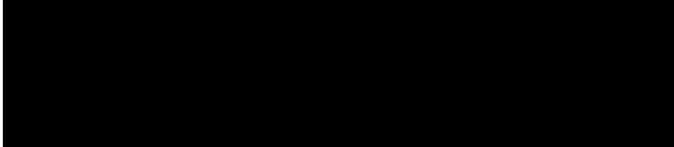
U.S. Department of Homeland Security

Citizenship and Immigration Services

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*DA*

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street N.W.  
Washington, DC 20536



File: WAC 02 202 50543

Office: CALIFORNIA SERVICE CENTER Date:

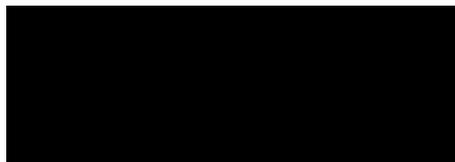
**NOV 05 2003**

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(1)(B) Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(1)(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*

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a Montessori school in West Oaks, California. The petitioner has eight employees and a gross annual income of \$305,000. It seeks to employ the beneficiary as a kindergarten teacher for a period of three years. The director determined that the petitioner had not established that the beneficiary was qualified to perform a specialty occupation. On appeal, the petitioner asserts that the beneficiary is qualified to perform a specialty occupation, as evidenced by the educational equivalency evaluations submitted.

The issue in this proceeding is whether the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position.

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.

With regard to judging whether practical experience or specialized training is equivalent to the completion of a college degree, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

[E]quivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has 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.
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association of society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through

a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

In the original petition, the petitioner submitted an educational and work experience equivalency document from e-ValReports, along with the following materials: a letter from the beneficiary's previous employer that praised the beneficiary's abilities with pre-school students; and two Montessori teacher training course certificates. The document from e-ValReports stated that, based on the beneficiary's education and twelve and a half years of work experience, the evaluator determined that the beneficiary held the equivalent of a baccalaureate degree in early childhood education from an accredited university in the United States.

The director requested further documentation from the petitioner as to whether the beneficiary was qualified to perform the duties of the proffered position, as well as evidence that the proffered job was a specialty occupation. In response, counsel submitted a brief, a 1998 AAO decision in which an H1b petition for a Montessori pre-school teacher was granted, several job announcements, and two equivalency evaluations, one from Alan D. Osterndorf, and another from Kristin E. Raitzer.

In denying the petition, the director noted that the beneficiary did not hold a bachelor's degree, which is the minimum entry requirement in the field of teaching. He also concluded that the educational evaluation materials were not sufficient to support a finding that the beneficiary had earned recognition of expertise in the specialty field. On appeal, counsel asserts that the beneficiary is qualified to perform the specialty occupation by virtue of her prior work experience, coupled with her specialized training.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), any evaluation of the beneficiary's educational background in combination with her employment experience needs to be done by an official who has 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. None of the evaluators whose

opinions were submitted has the authority to grant college-level credit for the beneficiary's work experience.

Pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), Citizenship and Immigration Services (CIS) can make a determination that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. With regard to determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks.

With regard to the instant petition, the beneficiary has twelve and a half years of relevant pre-school work in Sri Lanka. Although the beneficiary has enough work experience to meet the numerical equation for educational equivalency, the record does not establish that the beneficiary meets the other requirements of 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5). Although counsel asserts that the evaluations provided are evidence that the beneficiary has received professional recognition in the specialty field (pre-school education), such evaluations are used by CIS as advisory opinions only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (1988). The record regarding the beneficiary's work experience and educational background is simply too vague to substantiate the opinions contained in the evaluations.

The remaining criteria for fulfilling 8 C.F.R. § 214.2 (h)(4)(iii)(D) have not been established. For example, according to regulatory criterion, the beneficiary's experience must be gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Once again, the lack of evidence on record with regard to the beneficiary's subordinates, peers or supervisors makes it impossible to arrive at any conclusion under this criterion.

In addition, the petitioner has not submitted any of the documentation outlined in 8 C.F.R. § 214.2 (h)(4)(iii)(D)(i), (ii), (iii), (iv), or (v) to establish that the beneficiary has recognition of her expertise in pre-school education.

Without more persuasive evidence, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position.

An additional factor to be considered in this case is the beneficiary's lack of state-issued teaching credentials, which would be akin to a license to teach. The State of California requires kindergarten teachers to be certified. With regard to licensure for H classification, 8 C.F.R. § 214.2 (h) (4) (v), states the following:

(A) *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

(C) *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

Upon review of the record, the petitioner has not established that, at the time of filing the instant petition, the beneficiary possessed a teaching certificate or other credentials issued by the State of California. The statutory

requirement is that the beneficiary be eligible for the visa classification sought at the time of filing the visa petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Comm. 1978).

Alternatively, 8 C.F.R. § 214.2(h)(4)(v) outlines circumstances in which a beneficiary may work with a temporary license or without a license when the state permits such work under supervision. The petitioner did not establish that these circumstances existed with regard to the instant petition, nor is it clear from the record whether the State of California would permit the beneficiary to work with a temporary license or without a license but under supervision. Without more compelling evidence, the petitioner has not established that the beneficiary is qualified to perform the work of a kindergarten teacher.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.