

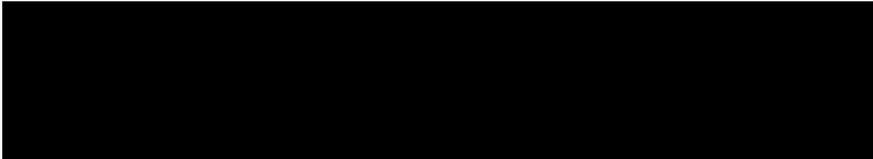
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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invasion of personal privacy

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



NOV 07 2003

File: LIN 02 119 51922 Office: NEBRASKA 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:



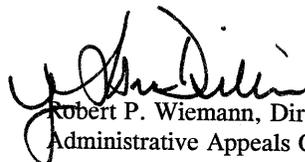
**INSTRUCTIONS:**

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, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a Detroit, Michigan adult education institution with seventy employees and a gross annual income of over \$1,000,000. It seeks to employ the beneficiary as a teacher of English as a second language (ESL) 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 asserts that the position of English language teacher is a specialty occupation, and that the beneficiary is qualified to carry out the duties because he holds a bachelor's degree in the required specific specialty, and the State of Michigan does not require teachers at private, adult education schools to hold teaching certificates.

Section 214(i)(1) of 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 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.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on February 21, 2002, the petitioner stated that the beneficiary's job would be to teach English as a second language to foreign adult students. The petitioner's minimum requirement for the position is a bachelor's degree in English or a related field.

On April 4, 2002, the director requested more detailed information about the proposed job duties, as well as evidence that the beneficiary holds a Michigan teaching certificate. The director also asked for a copy of the beneficiary's foreign degree. In response, the petitioner submitted a copy of the beneficiary's Iraqi university transcripts, information regarding State of Michigan licensing requirements, copies of H1B petition approvals for several other of the petitioner's employees, and a brochure from the petitioner's institution.

On June 3, 2002, the director denied the petition. The director found all of the evidence on record to be incomplete and not fully responsive, consequently he determined that the petitioner had failed to prove that the position is a specialty occupation.

On appeal, counsel asserts that the common minimum entry requirement for adult education teachers in similar institutions is a bachelor's degree, and that the petitioner requires all of its instructors to hold at least a bachelor's degree in the subject to be taught.

In assessing whether the petitioner has established the criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), namely that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the field of adult ESL education, Citizenship and Immigration Services (CIS) turns to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for authoritative guidance. With regard to training and other qualifications for adult literacy, remedial and self-enrichment instructors, the *Handbook* 2002-2003 edition states on

page 195:

Requirements for teaching adult literacy and remedial education, including ESL and GED preparation, vary by State and by program. Federally funded programs run by State and local governments usually have higher standards than programs run by religious, community, or volunteer organizations. Most State and local governments and education institutions require that adult teachers have at least a bachelor's degree and preferably a master's degree. Some require an elementary or secondary teaching certificate and a few have recently begun requiring a certificate in ESL or adult education.

Although most states require adult education teachers to hold degrees, a degree is not necessarily a minimum entry qualification in other situations. Additionally, it is noted that the degree, when required, need not be in a specific specialty. To the extent that a baccalaureate or higher degree or its equivalent is not required for entry into the position of ESL teacher, the proffered position is not a specialty occupation.

The petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree, pursuant to 8 C.F.R. § 214.1(h)(4)(iii)(A)(2). Factors often considered by CIS when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for an adult-education ESL instructor were discussed in the previous section, and shall not be repeated here. The petitioner did not include any documentation regarding qualifications requirements for parallel positions in similar organizations. The petitioner also failed to submit evidence that any association of ESL educators has made a bachelor's degree a requirement for entry into the field, nor has it placed on the record letters or affidavits from other adult educational institutions which attest that such organizations "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations. Moreover, the petitioner has submitted no documentation that the position of an adult-education ESL instructor would involve duties seen as either unique or complex that only an individual with a degree in a specific specialty could perform them.

The petitioner has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). While the record contains statements that the petitioner always requires a degree or its equivalent for its instructor positions, there is no evidence on the record to support this. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The evidence does not demonstrate that 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, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The job description in the original petition states only that the beneficiary will be teaching English as a second language to foreign adult students. No further documentation as to any specialized or complex duties within this description has been placed on the record.

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.