

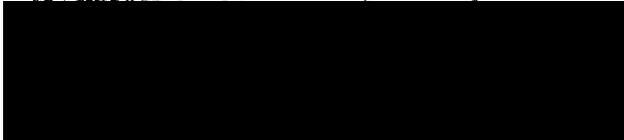
DR

U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



FILE: WAC-02-195-53270 OFFICE: CALIFORNIA SERVICE CENTER

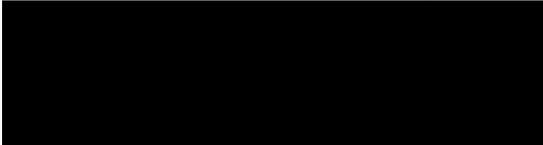
DATE: OCT 29 2003

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)

IN BEHALF OF PETITIONER:



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INSTRUCTIONS:

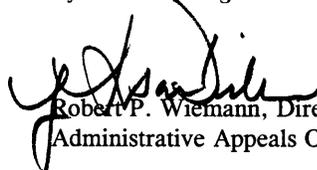
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a non-profit religious school that employs 25 persons and has an undisclosed gross annual income. It seeks to employ the beneficiary as a Spanish language curriculum coordinator. The director denied the petition because the petitioner failed to establish that the position qualified as a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the offered position qualifies as a specialty occupation.

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

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 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 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.

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.

In the initial I-129 petition, the petitioner stated that the beneficiary would design, create, write, select, implement, and evaluate curriculum for Spanish language instruction at the school, and that the position would be part-time, requiring five hours per week.

In a letter accompanying the petition, the petitioner stated the following regarding the offered position:

In this position [the candidate] would be responsible for the review and selection of Spanish curriculum materials, the designing of a Spanish language course, and its subsequent evaluation. Additionally, [the candidate] would interact with our Spanish language teachers to assure that they understand and follow the prescribed curriculum, as well as troubleshoot any problem areas. In order to perform these duties, an individual must have the in-depth knowledge of administration and education

Along with the petition, among other items, the petitioner submitted copies of the following: the beneficiary's resume; the beneficiary's degree in accounting and finance from the Technological Institute of Mexico, University Extension Center and a translation into the English language of the document; the Licentiate in Institution Management from The Superior School in Institution Management and a translation into the English language of the document; an educational evaluation by Professor Olga Romero, Professor of Education at Bank Street College of Education, stating that the beneficiary has the equivalent of a bachelor's degree in early childhood development; a letter from Barbara Coleman, Associate Dean for Administration at Bank Street College of Education, confirming that faculty in general, and Professor

Olga Romero in particular, have the authority to recommend that college level credit be granted for training and experience; and the petitioner's school directory.

On June 3, 2002, the director requested evidence that would show the following:

- A bachelor or higher degree or its equivalent is normally the minimum requirement for entry into the particular position (for the petitioner's industry). For example, provide evidence that would show that the petitioner and its competitors normally require a degree for the position of Spanish language curriculum coordinator; or,
- The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, show that the particular position is so complex or unique that it can be performed only by an individual with a degree. For example, provide evidence that would show that the petitioner's competitors normally require degrees for closely related positions or provide a more detailed explanation of the duties; or,
- The employer normally requires a degree or its equivalent position. For example, provide employment histories of employees with degrees previously in that position; or,
- 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 bachelor or higher degree. For example, evidence that would show a more detailed explanation of the duties.

In response, the petitioner submitted a letter from the principal. In the letter, the principal stated that the candidate would work with and supervise the teachers involved in the Spanish language program, and that the school requires its teachers to have at least a bachelor's degree. In addition, the principal stated that the position's duties would require extensive review and analysis of curriculum materials in light of the needs of the students, and this would require the application of administrative theory and practice as well as knowledge of child development. Moreover, the principal stated that the candidate would be expected to find and develop an appropriate curriculum for students in grades kindergarten through grade eight, requiring an intimate knowledge of childhood educational theory and practice.

Along with the letter, the principal included page 31 of the school's personnel handbook.

On June 20, 2002, the director denied the petition, finding that

the position failed to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the offered position was newly created and would be for five hours each week. In addition, the director stated that, according to the personnel book, all the petitioner's teachers hold at least a bachelor's degree, thus, implying that the beneficiary would work and interact with persons who themselves may be employed in specialty occupations. However, the director found that the petitioner failed to provide evidence that would show: (1) a bachelor's degree is a normal, industry-wide minimum requirement for entry into the offered position, and (2) that the position was an essential component of the school's operation. Finally, the director determined that the proposed duties and level of responsibility did not indicate complexity or authority beyond what is normally encountered in the occupational field. The director stated that in examining whether a position is a specialty occupation, the actual duties to be performed are determinative and not the title. Therefore, according to the director, the evidence of record failed to show that the job offered could not be performed by an experienced individual whose educational training falls short of a bachelor's degree.

On appeal, counsel asserts that the position qualifies as a specialty occupation and submits additional evidence.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) describes the criteria to establish that a position qualifies as a specialty occupation. The petitioner has satisfied one of its criteria: a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

According to the 2002-2003 edition of the Department of Labor's *Occupational Outlook Handbook*, (the *Handbook*), on page 187, the offered position is very similar to an instructional coordinator. The *Handbook* describes the position as developing instructional materials, training teachers, and assessing educational programs in terms of qualifying standards and adherence to regulations and standards. Still further, it states that instructional coordinators often specialize in specific subjects, such as mathematics, social studies, or English as a Second Language. They evaluate how well a school's curriculum meets students' needs, they research teaching methods and techniques, they develop procedures to determine whether program goals are being met, and based on their research and observations of instructional practice, they recommend instruction and curriculum improvements. The *Handbook* states that other duties are to review textbooks and other educational materials and make recommendations on purchases, and to monitor the ways in which they are used in the classroom. Finally, the *Handbook* states that instructional coordinators plan and provide onsite education for teachers, training them in the use of materials and equipment or helping them to improve their skills.

According to the *Handbook*, the minimum educational requirement for instructional coordinators is a bachelor's degree, usually in education.

The record shows that the offered position's duties reflect those of the instructional coordinator position. Thus, it qualifies as a specialty occupation. Moreover, the record shows the beneficiary holds the educational equivalent of a bachelor's degree in early childhood education.

It is important to note that neither the Act or the regulations require the offered position to show that it would be an essential component of the school's operation.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.