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U.S. Department of Homeland Security  
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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: EAC 02 242 53088 Office: VERMONT SERVICE CENTER Date: APR 20 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration.

The petitioner is an approved Montessori teacher education facility that seeks to employ the beneficiary as a preschool teacher. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not 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)(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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a preschool teacher. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 11, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: teaching preschool students ages three to five; preparing course objectives and outline for course of study following Montessori-based curriculum guidelines; recording students' academic and social progress; assigning lessons and reviewing work; and counseling pupils and parents regarding adjustments and/or academic problems. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree and additional certification in Montessori training and education.

The director found that the proffered position was not a specialty occupation because the petitioner had not demonstrated that it normally requires a baccalaureate degree in a specific specialty for the proffered position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, as follows:

The Montessori teaching system categorizes their teachers differently from conventional schools. Under the Montessori system, the Beneficiary, as the teacher, would be defined as a Senior Teacher or Head Teacher (for any classroom or age group of children). The assistant teachers are called Team Teachers, the equivalent to Educational Technicians under the traditional school systems. However, these, [sic] Team Teacher/Ed Tech positions are not considered "Teachers" both by the State and the Montessori Institute, and thus are not held to the same state laws and Montessori Institute requirements, nor would it be considered a specialty occupation. That said, our client, [the beneficiary], is a Teacher and is being sought to teach the preschool class at the Montessori school, [the petitioner]. To therefore categorize or label the Beneficiary as a daycare provider instead of a teacher, because of how the DOL and the Occupational Outlook Handbook define a preschool teacher, is inaccurate and improper in this manner. . . .

The AAO routinely consults the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. It is noted that the *Handbook*, 1998-1999 edition, states at page 334:

Other schools require their own specialized training. 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 proffered position is that of a schoolteacher. The DOL's *Handbook*, 2004-2005 edition, finds that a minimum requirement for employment as a schoolteacher is a bachelor's degree and completion of an approved teacher-training program. In this case, the beneficiary holds a baccalaureate degree in psychology from a Canadian institution and a Montessori diploma. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. It is noted that the record does not contain an evaluation of the beneficiary's credentials from a

service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.