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20 Mass, Rm. A3042, 425 I Street, N.W.  
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U.S. Citizenship  
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Services

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**FEB 26 2004**



FILE: LIN 02 296 50590 Office: NEBRASKA SERVICE CENTER Date:

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:  
[Redacted]

**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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition 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 an adult education institute that seeks to employ the beneficiary as a teacher of English as a second language (ESL). 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 statement. Counsel had indicated that a brief would be submitted to the AAO on or before January 5, 2003. The record, however, does not contain any additional evidence, and it is, therefore, complete.

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 an ESL teacher. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 16, 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 teach English as a second language. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in English.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the record did not demonstrate that the petitioner provides a government-funded program, and that it could not be determined that the minimum requirement for entry into this particular position was a baccalaureate degree or its equivalent in a specific specialty. The director found 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 that the petitioner's program is funded by the State and operates under the supervision of the Detroit Public Schools. A thorough review of the record, however, reveals no evidence to support this assertion. The petitioner established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

When examining the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I), that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position, CIS routinely considers whether the *Handbook* reports that the industry requires a degree. As the director noted, according to the *Handbook*, educational requirements for ESL teachers vary, although government sponsored programs normally require a bachelor's degree or higher. In this case, counsel asserts that the proffered position operates under the auspices of the Detroit Board of Education, and that the petitioner provides a state-funded program. The documentation on the record, however, indicates that the Detroit Board of Education has a contract for services with the American Arab Community Outreach Services, not with the Detroit Education Center. The record contains no evidence to indicate that the latter two organizations are one and the same.

Thus, the evidence does not demonstrate that the petitioner falls within the *Handbook's* description of programs that normally require bachelor's degrees. As determined by the director, the petitioner did not establish any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.