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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: SRC-02-016-56883 Office: TEXAS SERVICE CENTER Date: JAN 21 2004

IN RE: Petitioner: [redacted]

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:

[redacted]

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 Director of the Texas Service Center denied the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The petition will be denied.

The petitioner is a private Christian elementary and middle school with 72 employees and a gross annual income of $2 million. It seeks to employ the beneficiary as an elementary school teacher for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On certification, counsel provides no additional information. Therefore, the record is complete.

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, in part, for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position or that the beneficiary holds the equivalent of a baccalaureate degree.

The AAO does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that

the AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> [E]lementary school teacher grades 1 through 6[.]

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, a review of the Florida Department of Education website at http://www.firn.edu/doe/choice/acc.htm finds that private schools are not licensed, approved, accredited or regulated as schools by the State of Florida. The petitioner states that, although its teachers do not require State licensing, they are required to be certified by the Association of Christian Schools International (ACSI). A review of the ACSI's website at http://www.acsi.org/web2002/services/cert/ finds that its educators must have, in part, a bachelor's degree from an accredited, ACSI-approved, or ACSI-recognized college or university. The record, however, does not demonstrate that a bachelor's degree described by the ACSI is the equivalent of a baccalaureate degree from an accredited institution of higher learning in the United States. In this case, the record indicates that the beneficiary was issued a Bachelor of Religious Education degree by the Bethany Theological Seminary and Bible College in Dothan, Alabama, based on 32 credit hours, a two-year course of

teacher education at St. Joseph's Teachers' College in Jamaica, a one-year teaching internship in Jamaica, and a high school diploma. The record, however, contains no independent evidence that the beneficiary's academic background is the equivalent of a baccalaureate degree conferred by an accredited institution of higher learning in the United States, such as an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As such, it cannot be determined that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors 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.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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 director's May 16, 2002 decision is affirmed. The petition is denied.