



U.S. Citizenship
and Immigration
Services



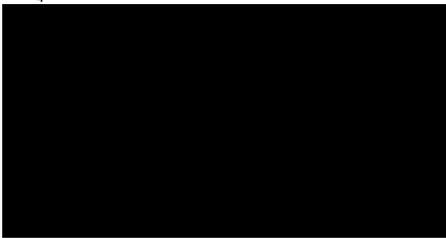
FILE: EAC 02 196 52414 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

A handwritten signature in cursive script, appearing to read "Mari Jensen".

for 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 independent private school that educates children from pre-kindergarten through the 9th grade. In order to employ the beneficiary as a kindergarten assistant-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 on the basis that the petitioner had not established that the proffered position was a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A). A critical factor in the director's deliberations was the fact that the proffered position does not require coursework in the field of teaching:

In the case at hand, the beneficiary has attained a BS degree in Marketing/Management but has no formal studies in the field of education. Without the acquisition of educational coursework the position of Assistant Teacher fails to qualify for the H-1B visa classification.

Contending that the director's decision was "arbitrary, capricious, an abuse of discretion, and contrary to law," counsel urges that the knowledge and abilities associated with the beneficiary's degree are "central" to the duties of the kindergarten assistant-teacher position at issue here.

The beneficiary holds a bachelor's degree from the State University of New York, Albany in two majors: business administration (with concentration in marketing/management) and art. She would serve as a kindergarten teacher. The letter which the petitioner filed with the Form I-129 describes the duties as follows:

In the position of Assistant Teacher . . . [the beneficiary] will work under the supervision of a head teacher to teach elementary students Mathematics, Art, English, Social Studies, and Reading, among other subjects. Among her responsibilities[,] [the beneficiary] will develop, prepare and deliver lessons; review curricula and prepares [sic] course programs and materials with the head teachers; plan, assign and correct study assignments; evaluate individual student performance and adjustment with the head teacher; attend parent conferences to advise and counsel them about student school performance; and attend faculty meetings and educational conferences.

The position . . . is a professional position requiring a Bachelor's degree with specialized coursework in subject matters that are relevant to the subject areas in which the Assistant Teacher will be working. This is the minimum entry level requirement for the position in view of the teaching and curriculum development responsibilities incumbent therein, and it is consistent with academic community standards.

In reaching its decision, the AAO considered the entire record of proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the

matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B as annotated by counsel, counsel's brief, and the documentary evidence enclosed with the brief.

Upon review and consideration of all of the evidence of record, the AAO has determined that the director's decision to deny the petition was correct. The record does not present an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

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.

To accord with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), quoted above, 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 contains highly specialized knowledge that must be applied to meet the performance requirements of a position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) is satisfied where the evidence establishes that a baccalaureate or higher degree, or the equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position. The evidence of record here does not reach this threshold.

Counsel contends that the proffered position requires a bachelor's degree in art because art has central and fundamental role in the petitioner's kindergarten curriculum, both as taught as a separate subject and as integrated into the teaching of other subjects. The record does not present evidence to support counsel's

contention. Nor is there evidence of record to corroborate counsel's assertion to the effect that there is a material relationship between the proposed duties and the beneficiary's coursework in Cultural Diversity; Languages, Codes, and Social Action; Anthropology; and Psychology. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The letter from the Connecticut Association of Independent Schools (CAIS) does not indicate that the knowledge associated with a degree in art or any other specific specialty is inherently necessary for kindergarten teaching. Rather, the CAIS letter only establishes that, to accord with CAIS accreditation standards, the proffered position must be filled with a person who holds "at minimum a Bachelor's degree and coursework relevant to the particular teaching position." As a degree and coursework may be relevant to a teaching position even if it does not contain highly specialized knowledge that must be applied in order to teach, the CAIS letter is not probative.

Finally, the descriptions of teaching duties do not establish that this kindergarten assistant-teacher position is one that normally requires at least a baccalaureate or higher degree, or the equivalent, in a specific specialty. The record does not demonstrate why a generalized level of knowledge in all the subjects taught would not sufficiently equip a person for the proffered position.

For the reasons discussed above, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

Next, the petitioner has not presented evidence that would qualify the proffered position under either of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record does not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) by establishing that a specific-specialty degree requirement is common to the industry in parallel positions among similar organizations. The CAIS letter does not indicate that the CAIS-accredited schools commonly require that their kindergarten teachers hold a degree in art or any other specific-specialty. Rather, the letter only indicates that CAIS-accredited schools require that their kindergarten teachers have degrees that are "relevant" to their duties.

The second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) provides that "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." Neither the duty descriptions, the CAIS letter, or any other evidence in the record shows job aspects that are sufficiently complex or unique to require a person with at least a baccalaureate degree in a specific specialty.

Next, the evidence of record does not meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the petitioner did not document the history of its hiring requirements for kindergarten assistant-teachers, there was no evidence to consider with regard to this

criterion. No relevant conclusions can be inferred from the list of assistant teachers, degrees, and majors that the petitioner appended to its RFE response letter.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. To the extent that they are described in the record, it appears that the duties can be performed with the generalized knowledge associated with liberal arts degrees in general.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.