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U.S. Citizenship
and Immigration
Services

DR

FILE: EAC 02 159 52214 Office: VERMONT SERVICE CENTER Date: **JUL 12 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:
[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.

Mari Johnson

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

DISCUSSION: The service center director denied the nonimmigrant visa petition and affirmed the decision in a subsequent motion to reconsider. 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 a pre-school/child development center. It seeks to employ the beneficiary as a pre-school teacher, and endeavors to classify her 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 proffered position was not a specialty occupation. On appeal, counsel submits a brief.

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

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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 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:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 are 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 proceedings 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; (5) the petitioner's motion; (6) the director's decision on the motion; and (7) Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a pre-school teacher. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: instruct pre-school children in activities designed to promote social, physical, and intellectual growth needed for primary school; plan age appropriate individual and group activities to stimulate growth in language, social and motor skills; liaise with parents and other school staff; and plan lessons and provide instruction in basic math, reading, art, music, physical education, and social interaction. The petitioner requires a minimum of a bachelor's degree in education or a related discipline for entry into the offered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation.

Upon review of the record, the petitioner has failed to establish that the offered position meets the requirements of the above cited regulatory criteria. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for teachers, as described in the *Handbook*. The *Handbook* notes that all 50 States and the District of Columbia require public school teachers to be licensed. Licensing, however, is not a uniform requirement in private educational institutions. The petitioner asserts that pre-schools and early childhood centers in New York City are subject to licensing by the Board of Health which requires a group teacher to have a state or city teachers license. In support of that assertion, the petitioner submitted a copy of Article 47.13 of the New York City health code pertaining to group teacher requirements. It is the petitioner's contention that the referenced article indicates that a minimum of a baccalaureate degree is normally required for entry into the proffered position. The article states that a group teacher must: be licensed by the New York City Board of Education or certified by

the New York State Education department as a teacher in early childhood education; have completed at least 150 clock hours (one semester) of supervised practice teaching in pre-kindergarten or kindergarten; and have 30 semester hours of professional education. As an alternative to the aforementioned requirements, however, a group teacher may be employed who has only 90 college credits and who does not meet all code requirements for early childhood education provided that: a qualified education director is on site to provide supervision; there is a written personal commitment from the teacher to take all required courses; there is a written statement from the college where the courses will be taken indicating that the courses meet code requirements, accompanied by a timetable for completion; and all documentation is submitted to the early childhood consultant for approval. The cited regulation does not indicate, however, that a baccalaureate degree in a particular discipline is required for licensing as a pre-school teacher. Furthermore, the *Handbook* notes that licensing requirements for preschool teachers vary by State. Requirements for public school teachers are generally higher than those for private school teachers. Some States require a bachelor's degree in early childhood education and others require an associate degree, while others require certification by a nationally recognized authority. Nothing in the record establishes, however, that a baccalaureate or higher degree in a specific specialty is normally the minimum requirement for entry into the proffered position. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations, and offers no evidence in that regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner does state that it normally requires a degree for the proffered position, and indicates that all 40 of its teachers hold bachelor's degrees, and "nearly" all have degrees in childhood education or a related subject. The petitioner did not provide documentary evidence, however, in support of this assertion. Such evidence should be readily available to the petitioner. The petitioner must do more than simply make an unsupported statement on the record to meet its burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the proffered position are routine for pre-school teachers in the industry. They are not so complex or unique that they can be performed only by individuals with a degree in a specific specialty. Nor are the duties 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. The petitioner has failed to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish any of the abovementioned regulatory criteria for classifying the offered position as a specialty occupation. Accordingly, the director's decision will 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.