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**U.S. Citizenship
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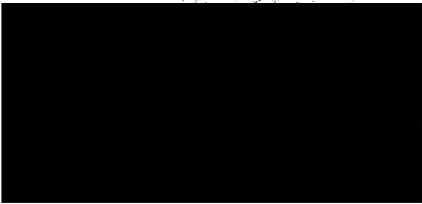
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FILE: LIN 03 159 51945 Office: NEBRASKA SERVICE CENTER Date: **JUL 23 2004**

IN RE: Petitioner:
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:



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

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 a corporation set up to pay the wages of the beneficiary. The petitioner seeks to employ the beneficiary as a part-time child development specialist. The petitioner, therefore, 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 appears to be a personal service/private household caregiver. On appeal, counsel asserts that the position is a specialty occupation and refers to the Department of Labor's *Dictionary of Occupational Titles (DOT)* classification of child development specialist.

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.

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 petitioner's letter of support dated April 14, 2003; (3) the director's request for additional evidence; (4) counsel's letter, dated April 30, 2003, that responds to the director's request; (5) the director's denial letter;

and (6) 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 part-time child development specialist to work with the petitioner's two-year old daughter, who has been diagnosed with severe to profound hearing loss in both ears. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; the petitioner's letter in support of the petition and counsel's letter in response to the director's request for further evidence. According to the initial petition, the petitioner lives in the United States and in the Philippines, and has decided to have his daughter live in the United States to receive optimum treatment and rehabilitative services. The petitioner identified the techniques to be used with his daughter as the oral method, and indicated that this course of training required constant repetition, patience, and supplemental care in addition to attendance at the [REDACTED] Portland, Oregon. According to the petitioner, the beneficiary's duties would involve working with the petitioner's child outside of the therapy sessions, as well as coordinating the efforts of various doctors and therapists. In addition, the beneficiary would instruct the petitioner and other family members in therapy techniques, and would observe and play with the petitioner's daughter and obtain information relating to her mental and physical development. Finally, the beneficiary would formulate a teaching plan to develop the self-help, motor, cognitive and language skills of the petitioner's daughter, as well as teach sign language and vocabulary to the petitioner's daughter.

In the petitioner's response to the director's request for further evidence, the petitioner provided the following breakdown of the time to be spent by the beneficiary in various duties: teach sign language and vocabulary to the child: 30 percent; observe and play with the child and obtain information relating to her mental and physical development: 20 percent; consult and coordinate plans with other professionals: 20 percent; formulate a teaching plan to develop self-help, motor, cognitive and language skills: 15 percent; and instruct family in therapy techniques and modification: 10 percent. The petitioner indicated that the position required at least a bachelor's degree in special education, psychology, child development, or in a related field.

The director found that the proffered position was not a specialty occupation and stated that the duties of the position appear to be that of a personal service/private household caregiver. The director referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and its classification of personal service/private household caregiver. According to the *Handbook*, this classification did not require a baccalaureate degree in a specific specialty. 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 asserts that the position is a child development specialist and submits the DOL *Dictionary of Occupational Titles (DOT)* descriptions of child monitors, personal attendance caretaker, companion, home therapy, and child development specialist.

Upon review of the record, the petitioner has 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.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's 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/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the various *DOT* job descriptions submitted to the record by the petitioner, it should be noted that the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

With regard to the proffered position, the record is not clear as to why the director determined the position as that of a personal service/private household caregiver. The 2004-2005 edition of the *Handbook* describes these positions as follows:

Personal and home care aides—also called homemakers, caregivers, companions, and personal attendants—provide housekeeping and routine personal care services. They clean clients' houses, do laundry, and change bed linens. Aides may plan meals (including special diets), shop for food, and cook. Aides also may help clients move from bed, bathe, dress, and groom. Some accompany clients outside the home, serving as a guide and companion.

Personal and home care aides provide instruction and psychological support to their patients. They may advise families and patients on such things as nutrition, cleanliness, and household tasks. Aides also may assist in toilet training a severely mentally handicapped child, or they may just listen to clients talk about their problems.

In contrast, the duties described by the petitioner for the proffered position involve no housekeeping, cooking, or babysitting care of the petitioner's daughter. It is also noted that the position involves part-time duties in specific areas, namely sign language, monitoring physical and mental development of a hearing-impaired child, and working with the parents with regard to therapies and learning techniques. Although the *Handbook* does not examine the classification of child development specialist, the classification of special education teacher appears analogous to the proffered position. The *Handbook* describes special education teachers working within the school systems and then states:

Special education teachers who work with infants usually travel to the child's home to work with the child and his or her parents. Special education teachers show parents techniques and activities designed to stimulate the infant and encourage the growth of the child's skills. Toddlers usually receive their services as a preschool where special education teachers help them develop social, self-help, motor, language, and cognitive skills, often through the use of play.

With regard to training or academic credentials, the *Handbook* states:

All States require a bachelor's degree and the completion of an approved teacher preparation program with a prescribed number of subject and education credits and supervised practice teaching. Many States require a master's degree in special education, involving at least 1 year of additional course work, including a specialization, beyond the bachelor's degree.

With regard to the State of Oregon, according to a website for its commission on licensure, the state only has jurisdiction over special education teachers in the Oregon public school system. Special education teachers are required to be licensed, with some provisions for restricted licenses for substitute special education teachers *See* <http://www.tr.wou.edu/rrp/licwho.htm> (Available as of July 19, 2004.) Although the petitioner requires a baccalaureate degree in special education, child development, psychology, or a related field, the petitioner does not require a State license, or restricted license to perform the duties of the position. It also appears that the petitioner does not require prior teaching experience in related fields. Thus, while the petitioner requires a degree in fields that are related to a specific specialty, the duties of the position do not require completion of an approved teacher preparation program with supervised practice teaching. Without such qualifications, the job appears to be a layer of at-home rehabilitation and development for the petitioner's daughter in addition to the professional interventions and schooling that the petitioner's daughter will receive. As such, the position does not appear to be a specialty occupation that requires a baccalaureate degree in a specific specialty. Without more persuasive evidence, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to parallel positions in similar environments, the petitioner submitted no documentation on individuals performing such duties within private households. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to 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. In his letter of support, the petitioner stated the need for an employee to assist with the rehabilitation of his young daughter in a critical period of her language and speech development. There is no evidence in the record that the petitioner has previously hired any other assistants to perform the proffered position. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to 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 the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, and as the various medical experts attest in their statements, the duties of the position appear necessary to the early childhood development of the petitioner's daughter. However, as stated previously, they do not appear to be duties performed at the level of a licensed speech or hearing specialist, or special education teacher. Without more persuasive evidence as to the complexity or specialized nature of the duties of the position, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, 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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the position. It is acknowledged that the petitioner submitted numerous letters from recognized experts in the field of pediatric otolaryngology, in instruction for the hearing impaired, and in community-based services for the hearing and speech-impaired. The letters submitted are the following:

A letter from [REDACTED] Executive Director [REDACTED] Oregon. [REDACTED] stated that the child development specialty position is highly specialized, and requires at least a bachelor's degree in special education, physiology, and early intervention child development or in a related field. According to [REDACTED] the person might have a specialty with hearing impaired children or in audiology as well. [REDACTED] stated that her group would only hire a person with a master's degree in one of the fields; however, the minimum qualification of the position in some places would be a person who only possessed a baccalaureate degree. Mrs. [REDACTED] then stated that she had reviewed the credentials of the beneficiary and that she believed that the beneficiary would be qualified for the position with the petitioner.

A letter from [REDACTED] Department of Pediatrics, School of Medicine, The University of Alabama at Birmingham. [REDACTED] stated that the petitioner's child required intensive and significant rehabilitative services including the help of a child developmental specialist who would act as the liaison for physicians, nurses, school officials, and parents to improve her deficits to the furthest possible extent. [REDACTED] stated that the position was highly specialized, requiring at least a bachelor's degree in special education, child development or in a related field. [REDACTED] also evaluated the beneficiary's credentials and determined that the beneficiary was qualified for the position.

A letter from [REDACTED] Assistant Professor of Pediatric Otolaryngology, School of Medicine, Oregon Health and Science University. In his letter [REDACTED] provided an evaluation of the daughter's hearing impairment. [REDACTED] described the significant rehabilitative services needed by the petitioner's daughter as including a trial of hearing aids, work with specialized pediatric speech and language pathologists, and the teaching of sign language.

A letter from [REDACTED] Vanderbilt University Medical Center [REDACTED] explained the need for a professional child development specialist for the petitioner's daughter, and further stated that the position required at a minimum of a bachelor degree in early intervention child development, special education, psychology, or a related field. [REDACTED] also stated that he had reviewed the credentials of the beneficiary, and also knew that she had received training in the techniques being used in the therapy for the petitioner's daughter. [REDACTED] believed that the beneficiary was qualified to perform the duties of the position.

A letter from [REDACTED] Infant-Family Specialist: Hearing Impaired, Hearing and Speech Institute, Portland, Oregon. [REDACTED] described the needs of the petitioner's daughter and stated that her institute filled positions similar to that of a child development specialist with individuals who possess at least a master's degree in special education, speech and language pathology or audiology. She added that although her institute required a master's degree for all its clinical staff, other agencies in the community may only require a bachelor's degree. She reviewed the beneficiary's credentials, and stated that she possessed the competencies needed to fill the specialized position of child development specialist.

A letter from [REDACTED] Portland, Oregon [REDACTED] identified himself as the principal of the school where the petitioner's daughter would start school in June of 2003. [REDACTED] explained that he thought it would be very helpful for the petitioner to hire a child development specialist to help with the rehabilitative process. [REDACTED] also stated that if the school were to hire a child development specialist, it would require at least a bachelor's degree in special education, psychology, child development, or a similar field. He also reviewed the beneficiary's credentials, and determined that she possessed the necessary qualifications to fill that position for the petitioner.

In addition, the petitioner submitted an educational equivalency document written by [REDACTED] for e-ValReports, Mukiteo, Washington [REDACTED] the beneficiary had the equivalent of a bachelor's degree in psychology from an accredited U.S. college based on her studies in psychology at Central Colleges of the Philippines. In addition, the evaluator determined that the beneficiary's three courses in education taken at the Roosevelt College in the Philippines were equivalent to the completion of three courses in education from an accredited U.S. college. These three courses are identified as foundations of education I, methods of teaching secondary school subjects, and curriculum development in the beneficiary's transcript from Roosevelt College. The evaluator then examined a certificate from Primacare Training and Development Center, and a training certificate from [REDACTED] Memorial Foundation, in the Philippines. He found that these documents established that the beneficiary had completed professional training in care giving and special education for hearing-impaired children.

Upon review of this document, it should be noted that a credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the AAO accepts the evaluator's findings with regard to the equivalency of the beneficiary's university studies to a U.S. baccalaureate degree; however, it does not accept the evaluator's determination of the beneficiary's professional training in care giving and special education for hearing-impaired children.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

With regard to the training of the beneficiary, the petitioner submitted three certificates of attendance for the beneficiary. They are:

A certificate of attendance at the Southeast Asian Institute for the Deaf, in Quezon City. The certificate indicates that the beneficiary attended the Institute during the 2002-2003 school year and that she successfully completed the beginners I coursework of the sign language program. There is no further information provided as to the length of the sign language program.

A certificate of completion from the [REDACTED] Memorial Foundation that states the beneficiary successfully completed the requirements of the special education course, Components of the Oral Method, in November 2002. The slogan of the foundation is identified as "Where Deaf Children Learn To Speak and Listen." This certificate contains no information on the coursework undertaken or the length of studies, and any connections between the institute and the higher education community in the Philippines.

A certification from the Primacare Training and Development Center, in Makati City, The Philippines, that stated the beneficiary was currently enrolled at the center for the live-in caregiver skills development program. This certification did list the areas of training; however, there is no information on the certification as to the length of the training, or any connection the development center may have with the higher education community in the Philippines.

Without more persuasive evidence with regard to the length of training in special education, or sign language, it is not possible to gauge whether the beneficiary is qualified to perform the duties of the proffered position. It is noted that the beneficiary does have a baccalaureate degree in psychology which has been determined to be the equivalent of a U.S. degree in psychology. However, it is also noted that the beneficiary obtained her degree in psychology nineteen years ago, and that none of the more specialized areas of child development or special education mentioned by the various experts who wrote letters with regard to the proffered position are included in her transcripts. The record is also devoid of any information as to whether the beneficiary ever completed an approved teacher preparation program with a prescribed number of subjects and education credits and supervised practice teaching, which the *Handbook* noted was required by all States for special education teachers.

In addition the record is devoid of any information that the beneficiary has worked in the field of special education, or, in fact, has ever worked previously with children, with or without hearing impairments. Although the petitioner has provided evidence of several training courses that the beneficiary has attended, as previously noted, there is insufficient information in the record with regard to the length of the training or the educational level of instruction. Without such information, it is not possible to ascertain if these training courses would be sufficient to establish the beneficiary's qualifications in the area of working with hearing-impaired children and their parents. Although various experts apparently examined the training credentials for the beneficiary, their statements that she is qualified to perform the duties of the position are not sufficient to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i). Without more persuasive evidence, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. For this additional reason, the petition may not be approved.

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. The appeal is dismissed. The petition is denied.

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