

D2

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



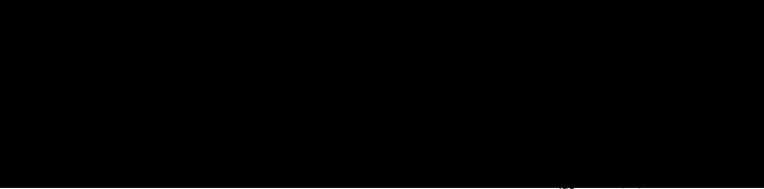
FILE: EAC 03 043 53212 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

JUN 01 2004

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:



**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

PUBLIC COPY

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 operates a daycare center and seeks to employ the beneficiary as a lead teacher/assistant director. 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, and because the petitioner does not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information.

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 Immigration and Nationality Act (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 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.

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; and (5) the 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 lead teacher/assistant director. 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 the evidence, the beneficiary would: consult with the director and other teachers about two hours every week planning and implementing class curriculum, planning field trips, and arranging parent conferences; work with pre-school children between the ages of two and five approximately 32 hours per week; teach social and behavioral skills implementing daily progress; plan group programs; teach motor skills, the alphabet and numbers, art, verbal skills, and hygiene; assist with homework; plan and implement after-school programs including art projects, music with instruments, drama, safety, and relating with strangers; work with children in outdoor play activities; and assist the director approximately one and one half hours per week in the supervision of programs, hiring personnel, and performing various administrative functions such as cases of child abuse, contacting child protective services, and monitoring the progress and special health/other needs of children. The petitioner requires a minimum of a bachelor’s degree with emphasis in early childhood development, or a combination of education and experience working with children, for entry into the offered position.

The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those listed for childcare workers in the *Handbook*, which provides:

Childcare workers nurture and teach children of all ages in childcare centers, nursery schools, preschools, public schools, private households, family childcare homes and before-and after- school programs. These workers play an important role in a child’s development by caring for the child when parents are at work or away for other reasons. . . . In addition to attending to children’s basic needs, these workers organize activities that stimulate the children’s physical, emotional, intellectual, and social growth. They help children explore their interests, develop their talents and independence, build self-esteem, and learn how to behave with others. . . .

....

Childcare workers spend most of their day working with children. However, they do maintain contact with parents or guardians through informal meetings or scheduled conferences to discuss each child's progress and needs. Many childcare workers keep records of each child's progress and suggest ways that parents can increase their child's learning and development at home. . . . Most childcare workers perform a combination of basic care and teaching duties. . . .

The duties described by the petitioner are similar to those listed in the *Handbook*, that require teaching and caregiver skills. The training and qualifications of childcare workers vary widely. Each State regulates licensing and caregiver training, with requirements ranging from a high school diploma to a college degree in child development or early childhood education. Childcare workers generally can obtain employment, however, with a high school diploma and little or no experience. The petitioner has therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Second, the petitioner does not assert that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position, and offers no evidence in that regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Third, the petitioner has failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner submitted one job advertisement in support of this proposition. The job advertised was for a head teacher at a child development center and required only an associate's degree, not a baccalaureate degree, for entry into the position.

Finally, the duties of the offered position are routine for childcare workers, plus some administrative duties assisting the petitioner's director. The duties are not so complex or unique that they can only be performed by individuals with a degree in a specific specialty. Nor are they 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations. The director's decision shall not be disturbed.

The beneficiary's qualifications to perform the duties of a specialty occupation shall not be discussed as the petition is dismissed on another ground.

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.