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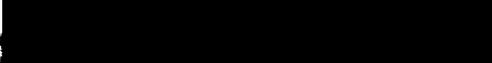
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: WAC 02 140 50192 Office: CALIFORNIA SERVICE CENTER Date: **NOV 05 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.

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 Montessori school that seeks to employ the beneficiary as a kindergarten teacher. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional documentation, including a new credentials evaluation for the beneficiary from Washington Evaluation Service.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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) 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 kindergarten teacher. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in elementary education, and Montessori training for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the petitioner had not submitted sufficient evidence to demonstrate that the beneficiary's education, experience, and training were equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states, in part, that the beneficiary is qualified for the position because she completed the equivalent of one year of study at the university level, and her overall credentials, consisting of her education, training, and more than twelve years of progressive work experience, are equivalent to a college degree. Counsel also submits a copy of an evaluation from the Washington Evaluation Service.

The record includes the following documentation related to the beneficiary's qualifications:

- Montessori & Pre School Diploma and transcript, dated August 22, 2001, issued by the Montessori Centre in Colombo, Sri Lanka, certifying that the beneficiary successfully completed a course of studies "on the principles and practice of the Montessori method together with Pre-School Educational Techniques for children 2 ½ - 6 years of age";
- Letter, dated November 15, 2001, from the directress of Brightstart Montessori International, at Maharagama, Sri Lanka, who states that the beneficiary was employed from August 1998 to September 2001, as a class teacher to the lower kindergarten class of children between three and four years old;
- Letter, dated July 31, 1998, from the principal of Visaka Pre School, at Kadawata, Sri Lanka, an institution that adopts a Montessori method of education for students between three years and five years old, who states that the beneficiary was employed as part of the tutorial staff from April 1989 to July 1998;
- Letter, dated August 17, 1998, from "[REDACTED] Montessori Method of Education" of Chatura Montessori, at Panadura, Sri Lanka, an institution for students between three years and five years old, who certifies that the beneficiary was employed as part of the tutorial staff from April 1990 to July 1998;
- Evaluation from Washington Evaluation Service, dated July 31, 2003, concluding that the beneficiary's formal academic studies are equivalent to one year of study at the university level, as required by an accredited U.S. university toward a bachelor's degree in education, and the beneficiary's more than 12 years of experience as a preschool and primary school teacher, combined with her educational background, are the equivalent of a Bachelor of Arts degree in education as awarded by an accredited U.S. university;
- Evaluation from [REDACTED] of Indiana University, dated January 15, 2003, concluding that the beneficiary's Montessori training and more than twelve years of related work experience are the equivalent of a Bachelor of Education degree with a concentration in Early Childhood Education from an accredited U.S. institution of higher education; and
- Evaluation from e-ValReports, dated March 7, 2002, concluding that the beneficiary's professional training and employment experience in the field of early childhood education

are the equivalent of a bachelor's degree in early childhood education from an accredited U.S. college.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a computer-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

On appeal, counsel submits an evaluation from the Washington Evaluation Service, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary's formal academic studies are equivalent to one year of study at the university level, as required by an accredited U.S. university toward a bachelor's degree in education, and the beneficiary's more than 12 years of experience as a preschool and primary school teacher, combined with her educational background, are the equivalent of a Bachelor of Arts degree in education as awarded by an accredited U.S. university. The evaluation, however, is based upon the beneficiary's education, training and work experience. 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 evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

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;
- (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.

The record contains an evaluation of the beneficiary's qualifications from another credentials evaluation service – e-ValReports. The evaluator found that the beneficiary's professional training at the Montessori Centre in Sri Lanka and her employment experience in the field of early childhood education are the equivalent of a bachelor's degree in early childhood education from an accredited U.S. college. Again, 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 evaluation also carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The record contains a third evaluation from [REDACTED] of Indiana University, who found that the beneficiary's Montessori training and more than twelve years of related work experience are the equivalent of a Bachelor of Education degree with a concentration in Early Childhood Education from an accredited U.S. institution of higher education. Although the director pointed out in his denial that the record contains no evidence from Indiana University to corroborate that Professor Andersen is employed by that institution or that he is authorized to grant college-level credit, counsel does not address this issue on appeal. The record does not contain any explanation for this discrepancy. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent

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).

objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. On appeal, counsel submits a third employment letter for the beneficiary, indicating that she was employed at Chatura Montessori in Panadura, Sri Lanka, as part of the tutorial staff from April 1990 to July 1998. It is noted that, although this letter is dated August 17, 1998, this letter appears nowhere in the record prior to the appeal. None of the three evaluators mentions this employment in their evaluations nor does it appear on the beneficiary's resume. The record does not contain any explanation as to why this employment was not previously mentioned or the conditions of the beneficiary's purported concurrent employment at Chatura Montessori in Panadura, Sri Lanka and at Visaka Pre School in Kadawata, Sri Lanka. *See Matter of Ho*. Additionally, much of the text of the letters from Chatura Montessori and Visaka Pre School is identical. Thus, the significance of the letters is somewhat diminished. In view of the foregoing, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is teaching. Furthermore, none of the employers indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, because of the previously mentioned inconsistencies in the record, there is insufficient evidence that the beneficiary has recognition of expertise. *See Matter of Ho*.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.