



U.S. Citizenship
and Immigration
Services

D2



FILE: EAC 03 111 53912 Office: VERMONT SERVICE CENTER Date: SEP 01 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:



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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 private Islamic school with preschool, kindergarten, elementary and middle school classes. It seeks to employ the beneficiary as an English language teacher. 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and that the director's decision was capricious and arbitrary.

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; (3) the director's request for additional evidence, dated March 10, 2003; (4) counsel's letter 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 an English language teacher. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary's duties would involve designing and developing children's courses in English language and literature, including linguistic and comparative literature. According to the petitioner, the beneficiary would also provide assistance to the principal in the development of curricula for all grade levels and would train teachers. The beneficiary would also develop successful lesson plans, using various effective teaching strategies, would deal with disruptive students and encourage appropriate behavior. In its response to the director's request for further evidence, counsel stated that 20 percent of the beneficiary's time would be spent in designing and developing courses in the English language and literature, and 20 percent of her time would be spent in providing classroom instruction, administering and grading tests, and counseling. Counsel indicated that all of the petitioner's teachers are required to possess at least a bachelor's degree in the area related to the teaching, and are not required to be licensed. For the proffered position, the petitioner stated that it required the candidate to have a bachelor's degree in English literature.

The director found that the proffered position was not a specialty occupation and noted that the petitioner had not presented sufficient evidence to establish the level at which the beneficiary would teach. The director also noted that schools vary in their individual prerequisites for teaching staff. The director found further that the petitioner failed to provide sufficient documentary evidence to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director denied the petition because the petitioner failed to provide various types of documentation, including a copy of the job posting. Counsel asserts that the petitioner provided other, more authoritative documents to establish that the position was a specialty occupation, and that the petitioner is a bona fide, financially viable organization. Counsel submits no further documentation.

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 proffered position, the *Handbook* describes the work and training for both preschool teachers, as well as teachers for kindergarten, elementary, and middle school. As correctly

stated by the director, states have varying requisites for both the preschool and the other grade levels. For example, with regard to preschool teachers, the *Handbook* states:

Licensing requirements for preschool teachers also vary by State. Requirements for public preschool teachers are generally higher than those for private preschool teachers. Some States require a bachelor's degree in early childhood education, others require an associate's degree, and still others require certification by a nationally recognized authority. The Child Development Associate (CDA) credential, the most common type of certification, requires a mix of classroom training and experience working with children, along with an independent assessment of an individual's competence.

With regard to kindergarten, elementary and middle school teachers, the *Handbook* states:

All 50 States and the District of Columbia require public school teachers to be licensed. Licensure is not required for teachers in private schools. Usually licensure is granted by the State Board of Education or a licensure advisory committee. Teachers may be licensed to teach the early childhood grades (usually preschool through grade 3); the elementary grades (grades 1 through 6 or 8); the middle grades (grades 5 through 8); a secondary-education subject area (usually grades 7 through 12); or a special subject, such as reading or music (usually grades kindergarten through 12).

Requirements for regular licenses to teach kindergarten through grade 12 vary by State. However, all States require general education teachers to have a bachelor's degree and to have completed an approved teacher training program with a prescribed number of subject and education credits, as well as supervised practice teaching. Some States also require technology training and the attainment of a minimum grade point average. A number of States require that teachers obtain a master's degree in education within a specified period after they begin teaching.

While counsel correctly notes that teachers in private school do not need to be licensed, nevertheless, their positions still need to be considered specialty occupations based on the job duties of the position. With regard to the proffered position, since the petitioner has not identified the level at which the beneficiary would be teaching, the record is not sufficient to indicate that the position might qualify as a specialty occupation. In addition, counsel only identified duties for 40 percent of the beneficiary's time in the proffered position. Without a more complete breakdown of the beneficiary's working hours, the record is incomplete as to whether the proffered position is a teaching position, a curriculum development position, or a third position, that incorporates additional duties beyond teaching and curriculum development. It is also unclear why the beneficiary would require a bachelor's degree in English literature for a teaching position in a school with classes for preschool, elementary and middle school students. The *Handbook* describes no such requirement for preschool teachers, or teachers at other levels. As previously stated, 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. Without more persuasive evidence, the petitioner has not established that a baccalaureate degree in a specific specialty is the minimum requirement for entry into the proffered position.

With regard to parallel English language teaching positions in similar Islamic schools, the petitioner submitted no further documentation. 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. The petitioner stated in its petition that it had nine teaching staff. In its response to the request for further evidence, counsel stated that every teacher in the petitioner's school was required to possess at least a bachelor's degree in the area related to the teaching. However, the record is devoid of any documentary evidence on any present or previous English language teachers who have worked for the petitioner and their academic credentials. Without more persuasive evidence, the petitioner has not met 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, the duties of the position appear limited in their specificity. As previously noted, the petitioner only identified duties that would occupy 40 percent of the beneficiary's work time. Although counsel stated in its response to the director's request for further evidence that the beneficiary would be performing the duties of a teacher as understood in common parlance, this assertion is not sufficient to further substantiate the duties of the position. The assertions of counsel do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). *Matter of Obaigbena*, 19 I&N Dec. 534 (BIA 1988). Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive evidence, 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 did not establish that the beneficiary is qualified to perform the duties of the position. The proffered position is in a field distinct from her previous H-1B work as a content editor and computer instructor. While the beneficiary has multiple university degrees from U.S. accredited educational institutions, the record is not clear how these degrees relate to the duties of the proffered position. For example, the petitioner, by providing the beneficiary's other diplomas from Dakota State University, established that the beneficiary has two bachelor's degrees, one in education and the other in English for information systems. With regard to the first degree, there is no information in the record as to the level of the teaching coursework done by the beneficiary for her degree in education, and the relevancy of this coursework to the duties of the proffered position. The latter degree appears more relevant to her previous H-1B employment. The petitioner also stated that the beneficiary had a master's degree in English from Kent State University, while her diploma from this university merely indicates that she has a master's of arts, with no major specified. There is no transcript provided to identify any teaching courses. In sum, the record lacks a full explanation of the beneficiary's degrees and how they relate to the duties of the proffered position. For this additional reason, the petition may not be approved.

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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.