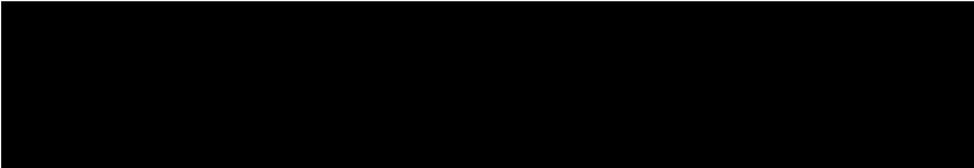




U.S. Citizenship
and Immigration
Services

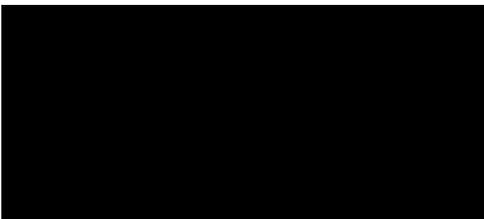


FILE: EAC 03 059 55451 Office: VERMONT SERVICE CENTER Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a non-profit education and family support organization that seeks to employ the beneficiary as a before and after school 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 the proffered position is not a specialty occupation. On appeal, counsel states that the proffered position qualifies as 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.

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 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 before and after school teacher. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to the petitioner's December 13, 2002 letter, the beneficiary would perform duties that entail guiding, supporting, supervising, and caring for children and youth in the areas of academic support, cultural enrichment, youth leadership, recreating, technology, multidisciplinary arts, and employment. Specifically, the beneficiary would develop, plan, and implement age-appropriate learning and enrichment activities using student-centered and inquiry based approaches for assigned groups of students between the ages of 5-18; provide on-going communication about the progress and performance of students to the program coordinator, and when appropriate, to the parents or guardians of students; participate and contribute to developing program staff; supervise students during morning drop-off and afternoon pick-up; and participate in field-related professional development trainings and workshops.

In its March 21, 2003 letter, the petitioner stated that the beneficiary would participate in a bilingual collaborative planning process that integrates educational, artistic, and bilingual/multicultural objectives with instructional content and methodology; design and teach in the English and Spanish languages environmental design theory and drawing technique instructional units for students of varying ages and skill levels; model techniques and curriculum to staff and volunteers; assist in the design of an exhibit of educational art pieces, models, and green architecture created by students; and collaborate in evaluating the architectural education curriculum. The petitioner stated that a candidate must possess a bachelor's degree in an arts focused content area that will support a child's cognitive, socio-emotional, and physical growth. The petitioner emphasized that it requires bilingual/multicultural skills.

The director determined that the part-time proffered position was not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that, as described in the excerpt from the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the duties of the proffered position were not performed by a general education teacher. Rather, the director found that the proffered position's duties resembled those performed by a vocational teacher, a position that does not require a bachelor's degree. The director found that the jobs in the submitted postings were dissimilar from the proffered position, and that the posting for the industrial arts teacher did not indicate whether a bachelor's degree was required for the position. The director mentioned that the petitioner currently employs a person holding an associates degree who teaches at the same grade level as the proposed position. This evinces, the director stated, that the petitioner does not require a bachelor's degree in a specific specialty for a position as a teacher.

On appeal, counsel states that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A) and submits additional evidence.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

According to the *Handbook*, the proffered position is an amalgam of an instructional coordinator and a teacher, not a vocational teacher. Instructional coordinators often specialize in specific subjects, such as reading, language arts, mathematics, or social studies. They develop instructional materials, train teachers, and assess educational programs; they also assist in implementing new technology in the classroom; they evaluate how well a school's curriculum meets students' needs; they may train teachers about the use of materials and equipment or help them to improve their skills; and they also mentor new teachers and train experienced ones in the latest instructional methods.

The *Handbook* reports that the minimum educational requirement for instructional coordinators is a bachelor's degree, usually in education. However, many instructional coordinators have training in curriculum development and instruction, or in a specific academic field, such as mathematics or history. Consequently, the petitioner's requirement of a baccalaureate degree in architecture would be suitable; it is in a specific academic field that is directly related to the discipline under study: architecture. According to the *Handbook*, licensure is not required for teachers in private schools. The *Handbook* relays that teachers may hold bachelor's degrees in the subject they will teach.

The record shows that the offered position's duties reflect those of an instructional coordinator and teacher. Thus, it qualifies as a specialty occupation. Moreover, the evidentiary record shows the beneficiary holds a U.S. bachelor's degree in architecture.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.