

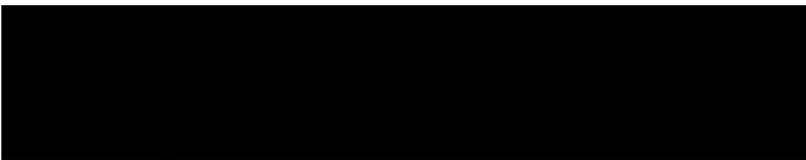
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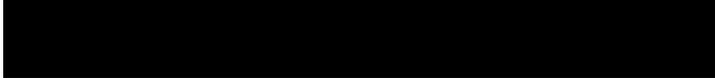
U.S. Citizenship
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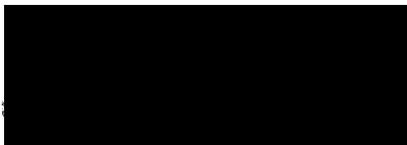


FILE:  Office: CALIFORNIA SERVICE CENTER Date: **APR 06 2005**

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California Service Center 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 preschool and elementary school, established in 1982, with eight full-time and four part-time employees. It seeks to employ the beneficiary as its preschool administrator. The director denied the petition because he found the beneficiary was not qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The initial issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. Although the director found the beneficiary to be unqualified to perform the duties of a specialty occupation, that determination was based on his finding that the proffered position of preschool administrator required the beneficiary to hold the minimum of a baccalaureate degree in education administration or educational supervision. The AAO does not agree that the proffered position imposes a degree requirement on the beneficiary. It will, therefore, conduct its own review of the petitioner's position to determine whether the employment qualifies as a specialty occupation.

To meet its burden of proof in establishing that its proffered position is a specialty occupation, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a general business manager. Evidence of the beneficiary’s duties includes: the Form I-129; an August 28, 2003 letter of support from the petitioner; and its December 5, 2003 response to the director’s request for evidence.

In its letter of support, the petitioner stated that its preschool administrator would be expected to provide direction, leadership and day-to-day management of school activities, and to perform the following specific duties:

- Coordinate the administrative functions with the President/Director, including improving the curriculum and teaching techniques and helping teachers learn new methods and materials, setting standards and goals, and establishing policies and procedures to carry them out, scheduling teachers and supervising their work, identifying students in need of extra services and referring them to special services provided by school districts or social services;
- Interview and recommend the hiring of teaching and service staff, including the negotiation of salary and benefits with prospective applicants and preparing teaching contracts;
- Review and evaluate facility activities to ensure conformance to state and local regulations, and prepare and file legal documents with the Department of Social Services and the California Department of Education;

- Prepare and submit school budget for approval;
- Research and authorize the purchase of instructional material and teaching aids such as Montessori materials, educational software, books, and toys to stimulate learning;
- Perform classroom teaching duties during the absence of regular teachers;
- Assist in building school enrollment by meeting prospective parents and explaining the school curriculum, extra curricular activities and other services available;
- Handle correspondence from other educational institutions pertaining to student admissions;
- Collect fees and maintains records such as state-mandated student health records and update them as necessary; and
- Assist in organizing special school functions, such as international day, mother's day, father's day, etc.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In his denial, the director concurred with the petitioner's description of its proffered position as an educational administrator. Following its own review of the 2004-2005 edition of the *Handbook*, the AAO also finds the proffered position to fall within the occupation of educational administrators, with duties closely aligned to those of an assistant principal. As discussed by the *Handbook* at pages 31-32:

Smooth operation of an educational institution requires competent administrators. *Education administrators* provide instructional leadership as well as manage the day-to-day activities in schools, preschools, daycare centers, and colleges and universities. They also direct the educational programs of businesses, correctional institutions, museums, and job training and community service organizations Education administrators set educational standards and goals and establish the policies and procedures to carry them out. They also supervise managers, support staff, teachers, counselors, librarians, coaches and others. They develop academic programs; monitor students' educational progress; train and motivate teachers and other staff; manage guidance and other student services; administer recordkeeping; prepare budgets, handle relations with parents, prospective and current students, employers, and the community; and perform many other duties

Those who manage elementary, middle, and secondary schools are called *principals*. They set the academic tone and hire, evaluate and help improve the skills of teachers and other staff. Principals confer with staff to advise, explain, or answer procedural questions. They visit classrooms, observe teaching methods, review instructional objectives, and examine learning materials. They actively work with teachers to develop and maintain high curriculum standards, develop mission statements, and set performance goals and objectives .

...

Principals prepare budgets and reports on various subjects, including finances and attendance, and oversee the requisition and allocation of supplies

Assistant principals aid the principal in the overall administration of the school. Some assistant principals hold this position for several years to prepare for advancement to principal jobs; others are career assistant principals. They are primarily responsible for scheduling student classes, ordering textbooks and supplies, and coordinating transportation, custodial, cafeteria, and other support services. They usually handle student discipline and attendance problems, social and recreational programs, and health and safety matters. They also may counsel students on personal, educational, or vocational matters. With the advent of site-based management, assistant principals are playing a greater role in ensuring the academic success of students by helping to develop new curriculums, evaluating teachers, and deal with school-community relations -- responsibilities previously assumed solely by the principal.

In preschools and childcare centers, education administrators are the director or supervisor of the school or center. Their job is similar to that of other school administrators in that they oversee daily activities and operation of the schools, hire and develop staff, and make sure that the school meets required regulations.

To determine the training and educational requirements imposed on those who seek employment as education administrators, the AAO turns to the 2004-2005 edition of the *Handbook* at page 33:

Most education administrators begin their careers in related occupations, and prepare for a job in education administration by completing a master's or doctoral degree. Because of the diversity of duties and levels of responsibility, their educational backgrounds and experience vary considerably. Principals, assistant principals . . . and preschool directors usually have held teaching positions before moving into administration

In most public schools, principals, assistant principals . . . need a master's degree in education administration or educational supervision. Some principals and central office administrators have a doctorate or specialized degree in educational administration. In private schools, which are not subject to State licensure requirements, some principals and assistant principals hold only a bachelor's degree; however, the majority have a master's or doctoral degree

Educational requirements for administrators of preschools and childcare centers vary depending on the setting of the program and the State of employment. Administrators who oversee school-based preschool programs are often required to have at least a bachelor's degree.

Although the *Handbook* indicates specific degree requirements for education administrators who work at the elementary, middle and secondary levels within both public and private schools, those degree requirements do not appear to extend to preschool administrators. Individuals who work as preschool administrators are only "often required" to have at least a baccalaureate degree if they work in school-based preschool programs. Therefore, a baccalaureate or higher degree is not normally required for employment as a preschool administrator and the proffered position cannot be qualified as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Turning to the second criterion at 8 C.F.R. § 214.2(h)(iii)(A) -- a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty -- the AAO finds that the petitioner has submitted no evidence that would allow consideration of whether its degree requirement is an industry norm. Although in its August 28, 2003 letter of support, the petitioner stated that a degree requirement was normal within its industry, this statement does not constitute evidence. Simply going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in this proceeding. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Therefore, the AAO must conclude that the proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(iii)(A).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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 determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, in its response to the director's request for evidence, the petitioner indicated that the position of preschool administrator is newly created. As a result, the petitioner has no employment history with regard to the proffered position and, therefore, cannot submit the type of documentation that could establish it as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. Although neither the petitioner or counsel has contended that the proffered position meets the specialized and complex threshold of this criterion, the AAO has, nevertheless, reviewed the duties of the proffered position to determine if they would require the beneficiary to possess a higher degree of knowledge and skill than would normally be expected of a preschool administrator. It has also considered whether the position might require the beneficiary to perform any duties

unrelated to those of a preschool administrator and thus require a separate set of skills. However, the AAO has found nothing in the record to distinguish the duties of the proffered position from those performed by preschool administrators in a range of private educational institutions across the United States. As a result, it concludes that the position does not qualify as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish a degree requirement for its proffered position of preschool administrator under any of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A) and the position is, therefore, not a specialty occupation. In light of its determination regarding the nature of the proffered position, the AAO will not proceed with an analysis of the beneficiary's qualifications to perform its duties. A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. Accordingly, the AAO, although it reached its decision on grounds other than those on which the director relied, shall not disturb the director's denial of the petition. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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 met that burden.

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