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U.S. Citizenship  
and Immigration  
Services

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APR 07 2005

FILE: WAC 03 023 51317 Office: CALIFORNIA SERVICE CENTER Date:

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 recruitment and placement service and seeks to employ the beneficiary as a test reviewer. 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 does not qualify as a specialty occupation. On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of 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 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 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 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 proceeding before the AAO contains: (1) the 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 counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a test reviewer. 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 this evidence the beneficiary would: prepare and submit for approval of management a plan or program that would enable teachers to successfully pass the CBEST and other qualifying examinations for teacher certification in the State of California; review and prepare candidates for the California CBEST examination; maintain a record of each applicant for teaching positions; prepare and submit to management a personal profile of each candidate with an analysis of educational background, work experience, and job potential; prepare and document for approval of management a training or review manual covering all tested subjects in the CBEST and other tests; prepare an analysis of the test performance of each applicant for a teaching position; prepare and submit for the approval of management a course syllabus that would cover all subjects tested in the CBEST and other tests; and prepare a critical analysis of the post-test performance of teaching candidates who have taken the test. The petitioner requires a minimum of a bachelor's degree in education for entry into the proffered position.

The duties of the proffered position, as described, appear to be sufficiently specialized and complex that knowledge required to perform them would usually be associated with the attainment of a baccalaureate or higher degree and meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Under the proposed job duties, the beneficiary would design a course syllabus and training manual to prepare college graduates, primarily from Southeast Asia, to pass a licensing examination that would enable them to obtain teacher certification in the State of California, and review and prepare those graduates for the teacher certification examination. Notwithstanding that the job duties may describe what appears to be a specialty occupation, the petitioner must also demonstrate that the qualified nonimmigrant alien is coming temporarily to the United States to perform services in a specialty occupation under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). This, the petitioner has failed to do.

The record contains no documentation establishing that the petitioner has ever recruited teaching candidates to teach in California, from Southeast Asia or from other places, or that it has a business plan to do so. The record does not establish through any corroborating documentation that the petitioner has facilities for the review and training of teaching candidates, or that it has the means or ability to recruit foreign candidates in

sufficient numbers to employ a full-time employee that would work as a CBEST review course instructor for the three year time period requested in the Form I-129 petition. Simply going on the 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). Based upon the foregoing, the petitioner has failed to establish that it will employ the beneficiary in a specialty occupation, and the petition must be denied.

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.