

identifying data deleted to
prevent disclosure of information
invasion of personal privacy

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

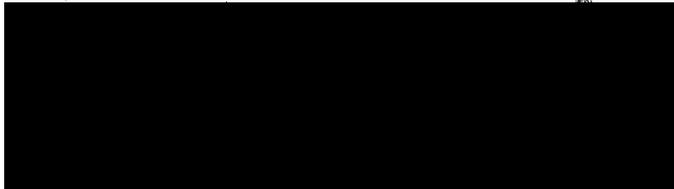


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

DA

APR 07 2005



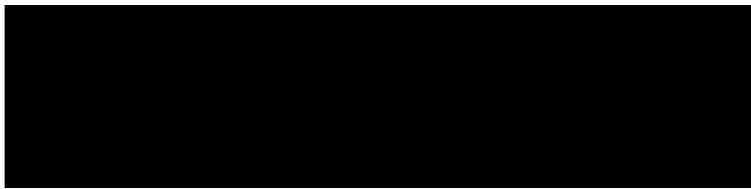
FILE: LIN 04 010 53566 Office: NEBRASKA SERVICE CENTER Date:

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 preschool/kindergarten and seeks to employ the beneficiary as a computer science lecturer/teacher. 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 indicating 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 computer science lecturer/teacher. 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: teach computer science courses to students, staff, and parents; participate actively in the activities of the petitioner; plan, evaluate, and assign computer science lessons; use interactive discussions to help students learn and apply computer concepts; design classroom presentations to meet student needs and abilities; teach students to use software applications; provide instructions on the use of the Internet and applications to limit access and use by establishing control procedures; prepare, administer, and grade computer science examinations; and maintain and update classroom desktop computers, software, and networks. The beneficiary would provide 30 minutes of classroom instruction per day to a pre-school class (ages 2½ years to 4 years) and a kindergarten class (approximately ages 4 years to 5 years). The beneficiary would also provide age appropriate computer instruction every few days to the tiny tots class (up to 2½ years of age). The petitioner requires a minimum of a bachelor's degree in computer science for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for computer support specialists who provide technical assistance, support, and advice to computer users, and preschool/kindergarten teachers in a private school setting. The beneficiary would also provide some instruction to other teachers and parents, although the nature of this particular duty is vaguely described and the complexity of this duty cannot be determined from the record.

The petitioner notes that the beneficiary would "get the materials we need, fix things when they break, show us how to use the hardware and programs we don't understand . . .", clean all computers weekly, keep the Comcast connection working, and clean the computer's memories on a weekly basis. Computer support specialists provide technical assistance, support and advice to computer users. There is no universally accepted way to prepare for a job as a computer support specialist. Some positions require a bachelor's

degree in computer science or information systems, while others require only a computer related associate degree or completion of a certification training program offered by a variety of vendors and product makers. A baccalaureate level education, or its equivalent, is not, therefore, the minimum requirement for entry into the proffered position and the petitioner has failed to establish the criterion listed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) with regard to this portion of the offered position's duties.

The *Handbook* notes that all 50 States and the District of Columbia require public school teachers to be licensed. Licensure, however, is not required for teachers in private schools. All States require public school 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. The education and teacher training requirements, however, do not apply to teachers in private school settings. Thus, there is no requirement that the beneficiary have a license, teacher training, or a degree in any specific specialty to enter into the proffered position. The petitioner has failed to establish the criterion listed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) with regard to the teaching portion of the offered position's duties.

The petitioner did not present evidence to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), (3) or (4) for the computer support portion of the proffered positions duties. The petitioner has, accordingly, failed to establish those criteria with respect to those duties.

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations for preschool/kindergarten teachers, and in support of that assertion submits several job advertisements. None of those advertisements, however, are from organizations similar to that of the petitioner and/or do not require a degree in a specific specialty for entry into the positions advertised. As such, the advertisements are of little evidentiary value and do not establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for entry into the proffered position as the position is new with the petitioner's organization. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the nature of the specific duties is not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, nor are the duties so complex or unique that they can be performed only by individuals with a degree in a specific specialty. The duties to be performed are routine in the industry for preschool/kindergarten teachers. The petitioner further asserts that the duties of the proffered position are parallel to teachers of adult literacy and remedial or self-enrichment education since the beneficiary would also provide computer instruction to teachers and student's parents. The nature of any such duties, however, is vaguely described, and it is impossible to determine the extent and complexity of any instruction that would be given. The petitioner has, therefore, failed to establish the above referenced criteria with regard to this stated duty. The petitioner has failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

LIN 04 010 53566

Page 5

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.