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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FEB 08 2005

FILE: EAC 03 147 52749 Office: VERMONT 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 Montessori school that seeks to employ the beneficiary as a Kindergarten teacher. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and copies of previously submitted supporting documentation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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 Kindergarten teacher. The petitioner indicated in its March 24, 2003 letter that the beneficiary was qualified for the proffered position because she holds a diploma in the Montessori Method of Education, has attended a workshop on Visual Imagery Strategy for the research in learning disabilities, and has over ten years of experience in the teaching field.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states, in part, that the beneficiary is qualified for the position because her more than 11 years of professional training and work experience in the Montessori method are equivalent to a baccalaureate degree. Counsel states further that the petitioner submitted two expert evaluations as supporting documentation, one of which the director completely ignored.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- Certification, dated April 30, 2001, issued to the beneficiary by the Havelock Gardens Training Centre for The Montessori Method of Education in Sri Lanka for completion of the Teachers' Training Course in the Montessori Method of Education;
- Letter, dated July 9, 2002, from the directress of the Havelock Gardens Training Centre for the Montessori Method of Education, stating that the beneficiary obtained the "Diploma Certificate" in the Teachers' Training Course in the Montessori Method of Education for Infant and Nursery Schools, and has six months of teaching experience at "this school";
- Letter of recommendation, dated February 17, 2003, from the directress of the Dangolla Montessori School in Sri Lanka, stating that the beneficiary was employed as a preschool teacher from January 1992 to September 2000, and from October 2000 "to date" as a teacher's assistant;
- Certification, dated 1976, issued by The Association of Teachers of Western Music, Speech, & Dramatic Art, in Sri Lanka, indicating that the beneficiary, as a pupil of the Good Shepherd Convent, passed Grade V in Music;
- Evaluation of Academics and Experience, dated June 2, 2003, from [REDACTED] Lecturer, Elementary and Early Childhood Education at Queens College of the City University of New York, who concludes that, based on the beneficiary's 11 years of progressively responsible work experience in the field of education, and her certificate of completion from the Havelock Gardens Training Center, the beneficiary holds the equivalent of a bachelor's degree in education; and
- Evaluation of Academics and Experience, dated June 12, 2003, from Professor James H. Borland, Professor and Chair at the Teachers College, Columbia University, who concludes that, based on the beneficiary's more than 11 years of experience and training in positions of progressively increasing responsibility and sophistication, and her coursework at Havelock Gardens Training Center, she holds the equivalent of a U.S. bachelor of arts degree in education.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a teaching-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study.

Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains evaluations from Lisa Scott, Lecturer, Elementary and Early Childhood Education at Queens College of the City University of New York, who concludes that, based on the beneficiary's 11 years of progressively responsible work experience in the field of education, and her certificate of completion from the Havelock Gardens Training Center, the beneficiary holds the equivalent of a bachelor's degree in education, and from Professor James H. Borland, Professor and Chair at the Teachers College, Columbia University, who concludes that, based on the beneficiary's more than 11 years of experience and training in positions of progressively increasing responsibility and sophistication, and her coursework at Havelock Gardens Training Center, she holds the equivalent of a U.S. bachelor of arts degree in education. It appears that both evaluators base their conclusions, in part, on the certificate issued by the Havelock Gardens Training Center. Neither the certificate nor the letter from this training center's directress, however, provides pertinent details, such as the length of this training. Furthermore, although the evaluators also conclude that the beneficiary completed coursework in general studies, such as English, social sciences, mathematics, and sciences, the record contains no independent evidence, other than the beneficiary's resume, to corroborate this finding. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of teaching. Both employers describe the beneficiary's duties generically; no specificity to the beneficiary's daily activities or her level of responsibility is provided. The AAO, therefore, cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is teaching. Furthermore, neither employer indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the aforementioned evaluators cannot be considered "recognized authorities" because the record contains insufficient corroborating evidence of the beneficiary's training and employment experience on which the evaluators base their conclusions.

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the petitioner has not demonstrated that a position exists for the beneficiary. It is noted that although information on the petition indicates that the petitioner has three employees, the petitioner's 2002 Schedule C, Profit or Loss from Business, reflects only \$15,518.50 in wages. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b) states that the alien must be coming to the United States temporarily to perform services in a specialty occupation. The petitioner has not established that the beneficiary will be performing services in the United States. For this additional reason, the petition may not be approved.

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.