

PUBLIC COPY

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

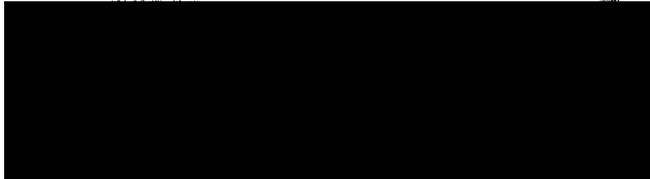
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

DA

FEB 08 2005



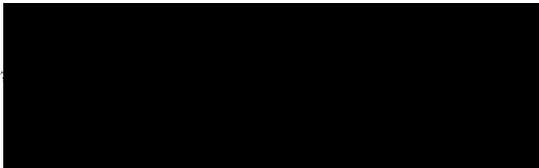
FILE: WAC 01 048 50872 Office: CALIFORNIA SERVICE CENTER Date:

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 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 dismissed. The petition will be denied.

The petitioner is a public school system that seeks to employ the beneficiary as a science teacher, middle and secondary. 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 beneficiary is not qualified to perform the proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a science teacher for the middle and secondary grades. The petitioner's November 22, 2000 letter stated that the beneficiary passed the California Basic Educational

Skills Test (CBEST), authorizing her to teach in public schools in California. The letter also stated that the beneficiary was qualified for the proffered position based on her educational background which included coursework in scientific fields such as zoology, anatomy, algebra, organic and inorganic chemistry, botany, microbiology.

The director determined that the beneficiary was not qualified for the proffered position because the beneficiary did not possess the required state credential from the California Commission on Teacher Credentialing.

In the appeal brief, counsel contends that the beneficiary is qualified for the proffered position. Counsel states that prior to the denial of the instant petition the petitioning entity had submitted to CIS the beneficiary's California Teacher Credential. Counsel cites the regulation at 8 C.F.R. § 214.2(h)(4)(v) to state that if an occupation requires a state or local license for a person to fully perform the duties of the occupation, a person seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

The AAO routinely consults the *Department of Labor's Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. The *Handbook* indicates:

All 50 States and the District of Columbia require public school teachers to be licensed. Licensure is not required for teachers in private schools. Usually licensure is granted by the State Board of Education or a licensure advisory committee. Teachers may be licensed to teach the early childhood grades (usually preschool through grade 3); the elementary grades (grades 1 through 6 or 8); the middle grades (grades 5 through 8); a secondary-education subject area (usually grades 7 through 12); or a special subject, such as reading or music (usually grades kindergarten through 12).

The *Handbook* also reports that requirements for regular licenses to teach kindergarten through grade 12 vary by state, and that "almost all States require applicants for a teacher's license to be tested for competency in basic skills, such as reading and writing, and in teaching."

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. Furthermore, pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), to qualify to perform services in a specialty occupation an alien must 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.

The beneficiary holds what is determined to be the equivalent of a Doctor of Dental Surgery degree in the United States. Counsel contends that the beneficiary holds the required teaching credential, and states that the regulation at 8 C.F.R. § 214.2(h)(4)(v)(A) applies here because the petitioning entity had submitted to CIS the beneficiary's California Teacher Credential prior to the denial of the petition.

Counsel's statement is not persuasive. The record of proceeding contains a transcript copy of the beneficiary's CBEST verification, and a copy of a certificate of clearance issued to the beneficiary by the State of California Commission on Teacher Credentialing. The latter document indicates that it verifies that the holder meets the personal identification and health qualifications necessary to obtain a California teaching credential. The document states that it is provided for:

candidates entering student teaching or other supervised field work, or for individuals who wish to establish their personal identification and health qualifications prior to applying for a teaching or service credential in California. It does not authorize unsupervised public school service, nor does it require renewal or county registration.

The evidentiary record does not contain a California teaching credential issued to the beneficiary; the certificate of clearance is not a California teaching credential. Although the petitioner's November 22, 2000 letter stated that the beneficiary is authorized to teach in public schools in California because she passed the CBEST, the petitioner failed to submit independent evidence that would corroborate this. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, based on the evidentiary record, the petitioner failed to establish that the beneficiary is qualified to perform the proffered position: science teacher, middle and secondary.

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.

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.