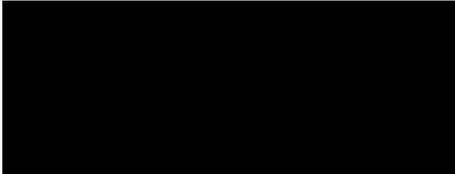


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FILE: EAC 03 167 51168 Office: VERMONT SERVICE CENTER Date: FEB 28 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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 Catholic elementary school that seeks to employ the beneficiary as a science program director and 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.

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.

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.

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 science program director and teacher. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a health related field or a science degree with an emphasis on human health.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's baccalaureate degree in respiratory therapy did not qualify her for the position of science program director and teacher. The director found further that the petitioner had not submitted any evidence that the beneficiary is licensed by the State of New Jersey to be employed as a schoolteacher. On appeal, counsel states, in part, that the petitioner is a private, Catholic school, and is not a public school, as erroneously reflected on the petition. Counsel states further that the Archdiocese of Newark does not require newly hired teachers to be licensed by the State of New Jersey. Counsel additionally states that the beneficiary's degree program qualifies her for the proffered position.

The record contains a document entitled *Archdiocese of Newark Vicariate for Education* that describes the qualifications for full-time and part-time elementary and high school teachers as follows:

- Commitment to the Catholic Church's teaching mission and philosophy;
- Dedication to a values-based education;
- Baccalaureate degree from an accredited college;
- A valid NJ State Certification or commitment to certification;
- Ongoing commitment to students, parents, community, and profession; and

- Teacher experience a plus.

The record also contains a letter, dated September 15, 2003, from the petitioner's principal who states, in part, as follows:

As the principal of St. Michael's School, I am authorized by the Archdiocese of Newark to make the determination as to whether a prospective teacher's undergraduate course background is reasonably sufficient for her to be hired as a classroom teacher. I have reviewed [the beneficiary's] undergraduate record in order to determine whether she is qualified a) to be a general elementary teacher, and b) to run our science program. [The beneficiary's] course transcript shows that she possesses sufficient education-related courses . . . to be a successful elementary teacher.

A review of the Department of Labor's *Occupational Outlook Handbook*, 2004-2005 edition, finds that licensure is not required for teachers of private schools. The document from the *Archdiocese of Newark Vicariate for Education* further indicates, in part, that a valid New Jersey State Certification, or commitment to certification, is required of its teachers, and a baccalaureate degree from an accredited college. In this case, the beneficiary holds a bachelor's degree in respiratory therapy conferred by a Filipino institution. An evaluation from a company that specializes in evaluating academic credentials concludes that the beneficiary possesses the equivalent of a bachelor's degree in respiratory therapy from a regionally accredited U.S. institution. As such, the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position, contrary to the director's finding, does not qualify as a specialty occupation.

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. In this case, the petitioner will accept any baccalaureate degree from an accredited college and does not require the completion of a teacher's training program. As such, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.