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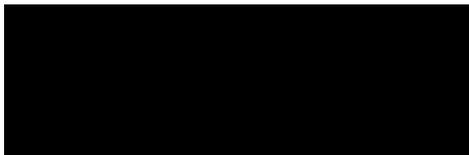
Petitioner:

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a Montessori school. It seeks to employ the beneficiary as a teacher and to classify her 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 on the ground that the beneficiary is not qualified 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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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

- (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.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on 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 [CIS] 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. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty 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 ¹ in the same specialty

¹ *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

occupation; (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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a private preschool and primary school, in operation since 1995, which seeks to hire the beneficiary as an elementary teacher. In a letter accompanying Form I-129 the petitioner asserted that the beneficiary was qualified for the position by virtue of her prior teaching experience and her bachelor's degree. Also accompanying the petition were photocopies of a letter from the principal of a Montessori School in Sri Lanka, stating that the beneficiary had been a teacher at that school from January 1, 1984 through July 31, 1992, and a bachelor of commerce degree awarded to the beneficiary by the University of Sri Jayewardenepura, in Sri Lanka, on May 1, 1992. In response to the RFE the petitioner submitted an evaluation of the beneficiary's educational credentials from a degree evaluation service in Hypoluxo, Florida, who declared that the beneficiary's Sri Lankan degree was equivalent to a bachelor of science in business administration from a U.S. college or university.

In his decision the director stated that a degree in business administration alone was insufficient to qualify the beneficiary to perform the services of a specialty occupation, and that the petitioner failed to show that the academic coursework or knowledge gained by the beneficiary in earning her bachelor of commerce degree were realistic prerequisites, or in any way related to, the teaching position at issue in the petition. In the director's view, therefore, the educational credentials evaluation lacked credibility. Citing information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* that teachers must have specific educational and experiential credentials, the director found that the beneficiary lacked the requisite qualifications. The director concluded that the beneficiary did not qualify to perform the services of the teaching position based on her education, because her degree was not in a specific specialty directly related to the position. Nor did the beneficiary qualify to perform the services of the position based on any of the other criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal the petitioner notes that the educational credentials evaluation previously submitted failed to take the beneficiary's teaching experience into consideration. The petitioner submits a new evaluation of the beneficiary's educational credentials and work experience from an academic (Ph.D. employee) at Nova Southeastern University in Fort Lauderdale, Florida, who declares that the beneficiary's bachelor of commerce degree in Sri Lanka, equivalent to a U.S. bachelor of science degree in business administration, together with her eight and a half years of teaching experience in Sri Lanka, are equivalent to a bachelor

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).

of arts degree in education from a U.S. college or university, thus qualifying the beneficiary to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D).

The new credentials evaluation lacks crucial attributes prescribed under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). It fails to demonstrate that the evaluator has the authority to award academic credit for work experience. Though the evaluator refers to Nova Southeastern University's "means of considering academic credit for certain related life experience" and declares that he has "the authority to recommend credit waiver to applicants who have completed previous professional training and/or work experience," this language does not state that the university has a program for granting academic credit based on previous training and/or work experience. No letter has been submitted by a qualified official at Nova Southeastern University confirming that the institution has a program for granting academic credit based on previous training and/or work experience. Moreover, the evaluator is a Ph.D. employee of the university's Math, Science, and Technology Department, not of the education department. There is no evidence in her evaluation, or elsewhere in the record, that she has the authority to grant academic credit in the field of education based on an individual's teaching experience.

CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not in accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). For the reasons discussed above, the evaluation from Nova Southeastern University is not persuasive evidence that the beneficiary's teaching experience and bachelor of commerce degree in Sri Lanka are equivalent to a bachelor's degree in education from a U.S. college or university, as required under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) for the beneficiary to be qualified to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires three years of specialized work experience for each year of college-level training the alien lacks for equivalence to a baccalaureate degree. The AAO will accept the beneficiary's first two years of university credit as general coursework preceding the specialization of a degree. The beneficiary's course list at the University of Sri Jayewardenepura does not show any education-related studies. Therefore, the beneficiary must demonstrate six years of progressively responsible work experience in areas related to the specialty to have the equivalent of a bachelor's degree in education or a related specialty. The letter from the Montessori School in Sri Lanka stating that the beneficiary was a teacher there from 1984 to 1992 provides no evidence that the beneficiary's work involved progressively responsible experience including the theoretical and practical application of specialized knowledge in the field of education. Furthermore, there is no evidence that the beneficiary was working with peers, supervisors, or subordinates in Sri Lanka who have a bachelor's degree or its equivalent in education or a related field, nor any documentation showing that the beneficiary has been recognized for her expertise in the specialty field. Thus, the record does not establish that the beneficiary's eight and a half years of teaching in Sri Lanka qualifies as specialized work experience that can be counted toward bachelor's degree equivalence in education or a related field. Accordingly, the beneficiary does not have six years of specialized and progressively responsible work experience in education or a related field, as required by 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5) for the beneficiary to be qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform the services of a specialty occupation.

Based on the foregoing analysis, the AAO determines that the beneficiary does not have the combination of education, specialized training, and/or work experience required under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to qualify to perform the services of a specialty occupation. Nor is the beneficiary qualified to perform the services of a specialty occupation under the other criteria of 8 C.F.R. § 214.2(h)(4)(iii)(C) because she does not hold a U.S. baccalaureate degree, as required under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1), does not hold a foreign degree that is equivalent to a U.S. baccalaureate degree in education or a related field, as required under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), and does not as far as the record shows hold a license, registration, or certification authorizing her to teach in California, the intended state of employment, as required under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.