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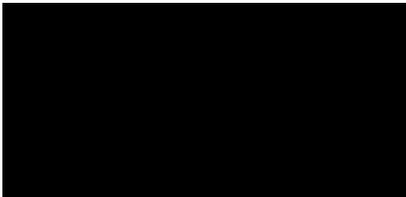
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FILE: WAC 03 211 52737 Office: CALIFORNIA SERVICE CENTER Date: SEP 19 2005

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 director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is a public charter school that seeks to employ the beneficiary as a first grade bi-lingual teacher. 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 evidence does not establish that the petitioner engages in a business to employ a specialty occupation position. On appeal, counsel submits a brief and new evidence.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) counsel'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.

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.

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 petitioner is seeking the beneficiary's services as a first grade bi-lingual teacher. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail preparing course objectives and outlines following the curriculum guidelines or requirements of state and school; lecturing, demonstrating and using audiovisual teaching aids to present subject matter to class; preparing, administering and correcting tests, and recording results; assigning lessons, correcting papers, and hearing oral presentations; teaching rules of conduct, and maintaining order in classroom and on playground; counseling students when adjustment and academic problems arise; discussing students' academic and behavioral attitudes and achievements with parents; keeping attendance and grade records as required by school; coordinating class field trips; performing other duties as assigned by the principal. The petitioner indicated that it required at least a bachelor's degree and appropriate coursework and training, as evaluated by the California Commission on Teacher Credentialing.

The director issued a request for additional information regarding the beneficiary's credentials and specifically requested evidence that the beneficiary has been certified to teach in the State of California. The director requested the following: evidence of filing the Labor Condition Application, Form ETA 9035, evidence that the school is accredited, information about the petitioner, federal income tax returns, state income tax returns, payroll summary, list of all employees, organizational chart, photographs of the business premises, lease agreement, and telephone listing.

Counsel provided a copy of the beneficiary's education evaluation indicating that she had the equivalent of a bachelor's degree in education. Counsel provided a letter from the Commission of Teaching Credentialing which counsel contends establishes the beneficiary's eligibility to teach. Counsel contended that this letter serves as evidence of authorization from the Commission of Teachers Credentialing of California to teach in California public schools. Counsel submitted a labor certification application that was certified on April 12, 2004. Counsel contended that the petitioner was accepted as a charter school by the Board of Trustees of the East Side Union High School District and was assigned a charter school number in September 2002. The petitioner provided a copy of the print out from the website of the California Department of Education listing the petitioner as a Charter School. Counsel submitted a copy of the Board of Trustees Minutes of East Side Union High School District of June 2002 that indicated that the petitioner's charter petition was approved. Counsel submitted a copy of the petitioner's brochure and a copy of the lease with the school site located at 467 N. White Road, San Jose.

The director noted that the petitioner did not submit all of the requested evidence. The director found that he was unable to determine if the petitioner is a United States employer as defined by the regulations. Therefore, the director found that without evidence to show that the petitioner engages in the business of investment firm [sic], the beneficiary will be entering the United States to be employed in other than a specialty occupation.

On appeal, counsel asserts that the petitioner is a valid business entity - a California Charter Public School. Counsel submits additional information such as a copy of the 2002 federal tax return extension request and explained that the school opened in August 2002; therefore, one tax return will be due on May 15, 2004 due

to the extension request. The petitioner submitted copies of the Form 941 quarterly tax returns. Counsel explained that the petitioner had concerns about submitting the Forms DE-6 with the employees' complete information in them. Additionally, the petitioner submitted a copy of the organizational chart, and a copy of the last minute memo dated September 11, 2003 from the California Department of Education, indicating that the petitioner was awarded \$400,000 from the Public Charter School Program. The petitioner submitted a copy of the phone book listing and noted that the petitioner had moved since then and referred to the lease that was previously submitted.

Upon review of the record, the AAO finds that the petitioner has established that it is operating as a public charter school in the State of California.

The petition may not granted, however, as the director has not made a determination on whether the position qualifies as a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A) and whether the beneficiary is qualified for the position under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C). Additionally, the Labor Condition Application in the record was certified on April 12, 2004, therefore the record is not clear that the petition met the requirements listed at 8 C.F.R. § 214.2(h)(4)(iii)(B).

The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the position offered is a specialty occupation, whether the beneficiary is qualified to perform the duties of the specialty occupation and whether the petitioner met the requirements for filing the labor condition application before submitting the initial petition. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's April 30, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.