



U.S. Citizenship
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FILE: WAC 05 034 52246 Office: CALIFORNIA SERVICE CENTER Date: AUG 07 2006

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:

SELF-REPRESENTED

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, Chief
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 an educational institution for children. It seeks to employ the beneficiary as a Japanese instructor, translator, and researcher. 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, finding that the proffered position is not a specialty occupation. The petitioner submits a timely appeal.

The record of proceeding before the AAO contains: (1) the 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) the 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 an instructor, translator, and researcher. Evidence of the beneficiary’s duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner’s support letter; and the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail teaching the Japanese and English languages; teaching mathematics in Japanese; translating and interpreting Japanese text books for children; analyzing students’ mistakes and improvements in order to determine levels and methods of instruction. The petitioner seeks to employ the beneficiary who holds the educational equivalent of a master’s of business administration degree and has mathematical skills and teaching experience.

The director stated that the proposed position resembles that of a self-enrichment teacher as that occupation is described in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a bachelor’s degree. The director found the letters from two teachers unpersuasive in showing that the offered position is a specialty occupation as the teachers did not state that the offered position requires a bachelor’s degree in a specific specialty and no evidence described the qualifications of the teachers. The director stated that some of the proposed duties reflect those of a teacher (preschool, kindergarten, elementary, middle, and secondary) as that occupation is described in the *Handbook*; however, he determined that the beneficiary’s primary function is a self-enrichment teacher. The director found the evidence relating to mathematics reveals that the beneficiary will tutor students in an after-school program that reinforces what was already learned in a formal education program. According to the director, the evidence of record established none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that its educational program allows a child to catch up in school, prepare for college, and communicate with Japanese-speaking parents. The petitioner asserts that it requires a bachelor’s degree for the offered position. The petitioner furnishes previously submitted evidence in the record.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

To qualify a position as a specialty occupation under the Act and regulations, the petitioner must require a baccalaureate degree in a specific academic specialty that directly relates to the position. With the position offered here, the AAO finds that the petitioner does not require a baccalaureate degree in a specific academic discipline. Although the record indicates that the petitioner requires a teaching credential, the petitioner does not require a baccalaureate degree in an academic discipline that directly relates to the offered position such as a degree in the Japanese or English languages or mathematics. The petitioner states that its “[m]inimum education is [a] college degree, and [that the candidate] should have teaching training, and teaching credential.” The petitioner also states “we definitely need [a] BA” and that “[m]ost of the time we hire Japanese instructor, they have [a] BA.” No evidence of record reflects that the bachelor’s degree that is required by the petitioner must be in a specific field. The letters from two teachers do not state that the

offered position would require a baccalaureate degree in a specific academic field. The letter from [REDACTED] indicates that university-level education and a teaching credential would be required. The letter from [REDACTED] states "I believe strongly one needs a college education to perform the best job of teaching students a new language."

The evidence of record reflects that for the proposed position the petitioner accepts a baccalaureate degree without requiring that the degree be in a specific academic discipline. As such, this educational requirement satisfies none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among organizations similar to the petitioner or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; the petitioner normally requires a degree or its equivalent in a specific specialty for the proffered position; or the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

As related in the discussion above, 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 on this ground.

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.