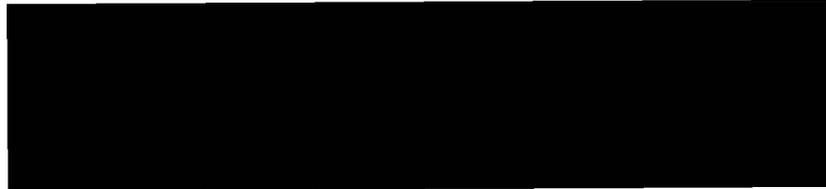




U.S. Citizenship
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FILE: EAC 04 064 51283 Office: VERMONT SERVICE CENTER Date: MAR 27 2006

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.

for Michael T. Kelly
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 childcare facility that seeks to employ the beneficiary as an assistant childcare director and to classify her 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 on the basis that the proposed position is not a specialty occupation. On appeal, the petitioner presents previously submitted evidence.

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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (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 seeks the beneficiary's services as an assistant childcare director. Evidence of the beneficiary's duties includes Form I-129 with attachments and the petitioner's response to the RFE. According to this evidence, the beneficiary's duties would include: general administration duties including preparing parent interviews; maintaining supplies and record keeping; supervising teachers in their duties; talking to parents about their child; preparing school activities; planning games; recording the children's activities; updating the food menu, financial records, and supply Inventory; and answering phone calls.

The director denied the petition on the basis that the evidence did not establish that the proposed position qualified as a specialty occupation under any one of the criteria set forth in the Act. The director found that the proposed duties were not so complex as to require a four-year bachelor's degree in education or a related field. The director further found that the announcements for other daycare administrator jobs did not establish an industry requirement to hire individuals with specialized degrees and that the petitioner's own hiring practices did not establish that it has its own requirement for a specialized bachelor's degree for the proposed position. The director noted that the beneficiary had a degree in literature and childcare management experience and that her qualifications to perform the proposed duties were not being questioned.

On appeal, the petitioner asserts that the beneficiary's degree in literature is not relevant and that she is qualified to perform the proposed duties because of her diploma in childcare management and because of her two years experience as a volunteer childcare provider. The petitioner asserts that the position is specialized because it requires the beneficiary to speak Dari and Pashto.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that its preschool administrator/director's assistant position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine the nature of a particular position, and whether or not it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. The petitioner must show that the duties of the position normally require a degree in a specific field of study.

The AAO routinely consults the DOL *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. A thorough review and analysis of the record shows that the duties of the proposed position most closely reflect those of an assistant childcare director, as described in the *Handbook*.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) - a bachelor's degree or

higher or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. With regard to the educational requirements of childcare workers, the *Handbook* states that:

Childcare centers have staffing requirements that are imposed by States and by insurers. Although requirements vary, in most cases a minimum age of 18 years is required for teachers, and directors or officers must be at least 21. In some States, assistants may work at age 16—in several, at age 14. Most States have established minimum educational or training requirements. Training requirements are most stringent for directors, less so for teachers, and minimal for childcare workers and teacher assistants. In many centers, directors must have a college degree, often with experience in child day care and specific training in early childhood development. Teachers must have a high school diploma and, in many cases, a combination of college education and experience. Assistants and childcare workers usually need a high school diploma, but that is not always a requirement. Some employers prefer to hire workers who have received credentials from a nationally recognized child day care organization.

The *Handbook* indicates that jobs for teachers only require applicants to be 18 years old and hold a high school diploma while many jobs for directors require bachelor's degrees but do not require that the bachelor's degree be in a specific field. The *Handbook* also notes that as childcare workers gain experience, some may advance to supervisory or administrative positions in large child care centers or preschools. As no specific course of study is required for entry into these occupations and non-degreed individuals may be promoted into these positions based on experience, the petitioner fails to establish that a bachelor's or higher degree, in a specific field of study, is the normal minimum requirement for entry into the proposed position. To the extent that the position includes a requirement that the worker be bilingual, the *Handbook* indicates that there is no specific degree requirement for translators or interpreters. Thus, the petitioner has failed to establish that the position is one that qualifies as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A).

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - the degree requirement, in a specific field of study, is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). The *Handbook* indicates that there is no industry-wide requirement for an education-related bachelor's degree for assistant childcare director positions. No evidence of record indicates that the educational requirements for childcare workers include a degree in a specific specialty.

The three job announcements from the Washington Post the petitioner submitted to establish this criterion are not sufficient to meet the petitioner's burden of proof. The duties for the Reston, Virginia

job, including developing and administering curriculum for academic and non-academic programs for preschool and kindergarten, are materially different than the proposed duties. The positions in Chantilly, Virginia, for an assistant and co-lead teachers, are for positions materially distinct from the proposed position. The position in Chevy Chase, Maryland, is for a director position, not an assistant director position, and requires a bachelor's degree in early childhood education. The petitioner did not submit any documentation to show that these other schools were similar in size and scope to the petitioner. These announcements fail to establish that a degree requirement in a specific field of study is common for childcare workers in parallel positions among similar organizations. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

A petitioner may also establish that its proposed position is a specialty occupation if it satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a degree in a specific specialty or its equivalent for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. The petitioner mentions two former assistant directors but does not submit copies of their degrees. The petitioner has not provided any proof that individuals in this position have possessed bachelor's degrees in education or a related field. In the absence of an employment history for the proposed position, the petitioner failed to establish that the position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that 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 bachelor's or higher degree in a specific field of study. The petitioner did not establish that the proposed position is so complex or unique that only an individual with a bachelor's degree in education or a related field can perform it. To the extent that the petitioner depicts them in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge usually associated with a bachelor's or higher degree, or its equivalent, in education or a related field. The duties, as described by the petitioner, appear to be the typical duties of an assistant childcare director, which the *Handbook* indicates do not require a bachelor's degree in a specific field and can be filled by a non-degreed individual who gets promoted from within based on experience. The petitioner asserts that the proposed position is a specialized position because it requires the beneficiary to speak Dari and Pashto but does not break down the duties to show why a degree in a specific field is necessary to perform those duties. Petitioner's assertions are

not supported by any document in the record and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*.

The petitioner has not established that the proposed position is a specialty occupation. For this additional reason, the petition may not be approved.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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