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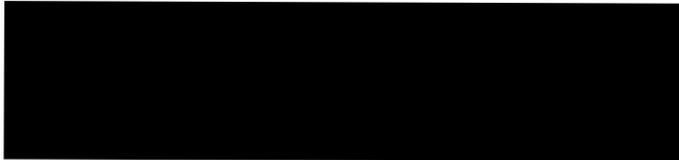
FILE: WAC 04 209 53767 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 2006**

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:



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 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 preschool and kindergarten that seeks to employ the beneficiary as a kindergarten 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 basis that the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel, submits a brief and previously submitted documents.

Section 214(i)(2) of the Immigration and Nationality Act (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 (RFE); (3) the petitioner's response to the RFE; (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 seeks the beneficiary's services as a kindergarten teacher. The petitioner requires a bachelor's degree or its equivalent for the proposed position.

The director found that the beneficiary was not qualified to perform services in a specialty occupation under any of the criteria under 8 C.F.R. 214.2(h)(4)(iii)(C).

On appeal, counsel states that the beneficiary is qualified for the position because the credentials evaluation submitted with the original petition and resubmitted on appeal equates the beneficiary's training and work experience with a bachelor's degree in early childhood education. Counsel asserts that since the beneficiary previously held an H-1B visa with another employer that this petition should be approved.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a bachelor's degree in early childhood education. The beneficiary does not hold a bachelor's degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a bachelor's degree from a U.S. college or university in any field of study. The beneficiary does not hold an unrestricted state license, registration, or certification which authorizes her to fully practice as a kindergarten teacher and be immediately engaged in teaching in California, the state of intended employment. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States bachelor's or higher degree shall be determined by 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 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.

The petitioner submitted an evaluation of the beneficiary's education and work experience. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in early childhood education from an accredited U.S. college or university. The evaluation is based on a combination of the beneficiary's education, training, and work experience. A credentials evaluation service cannot evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As such, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). There is no independent evidence in the record to establish that the evaluator has the authority to grant college-level credit at an accredited institution that has a program for granting college level credit for training and/or experience. The record contains no results of recognized college-level equivalency examinations or special credit programs. Nor is there evidence of certification or registration from a nationally-recognized professional association or society for the specialty. The credentials evaluator states that the beneficiary's Montessori diploma is equivalent to the completion of professional training in the Montessori method of education from a private training center in the United States. The evaluator does not conclude that this diploma is the equivalent of a bachelor's degree in early childhood education. As the beneficiary's qualifications have not been equated to a U.S. bachelor's degree under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2), (3), or (4), CIS must determine the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the petitioner must demonstrate three years of specialized training and/or work experience for each year of college-level training the alien lacks. The petitioner must clearly demonstrate 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 in the same specialty occupation<sup>1</sup>;
- (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

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<sup>1</sup> *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 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).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The record contains two letters from the beneficiary's former employers in Sri Lanka. Both employers stated that the beneficiary worked as a Montessori teacher but did not sufficiently describe the beneficiary's duties. They provided no specificity as to the beneficiary's daily activities or her level of responsibility. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is early childhood education. Furthermore, neither employer indicated that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who had a bachelor's degree or its equivalent in early childhood education. Finally, there is insufficient evidence in the record that the beneficiary has recognition of expertise as a kindergarten teacher by any of the types of documentation mentioned above.

The AAO now turns to counsel's assertion that this petition must be approved because the service center director previously approved an H-1B petition by a different employer on behalf of the same beneficiary. As stated previously, the evidence in the record does not support a finding that the beneficiary is qualified for the proposed position. The service center director's decision to approve another petition has no bearing on the AAO's decision in this matter, as service center directors' decisions are not binding on this office. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The AAO does note, however, that if the facts in the record relating to the previous petition were similar to the facts in this record, the service center director's approval of the petition would constitute gross error. The AAO is not required to approve a petition where eligibility has not been demonstrated, merely because of another approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proposed position. 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.