

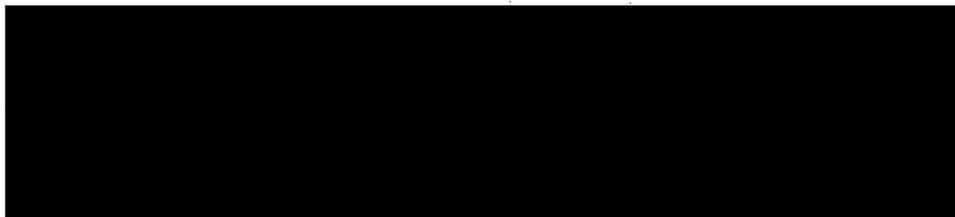
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U.S. Citizenship  
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FILE: LIN 05 175 52546 Office: NEBRASKA SERVICE CENTER Date: NOV 29 2006

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: Self-represented

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.

*for*   
Robert P. Wiemann, Chief  
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 public school system. It seeks to employ the beneficiary as a teacher and to classify him 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 record fails to establish that the beneficiary is 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.

The licensure requirement for H-1B classification is further specified in 8 C.F.R. § 214.2(h)(4)(v), which reads, in pertinent part, as follows:

- A. *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien . . . seeking H classification in that occupation must have that license prior to approval of the petition to be found eligible to enter the United States and immediately engage in employment in the occupation.
- B. *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, and the degree of supervision received, and any limitations place on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.
- C. *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

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 director's decision; and (5) the appeal (Form I-290B). The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is an urban school system with many Spanish-speaking children in its school-age population. As the beneficiary's native language is Spanish, the petitioner proposes to employ him as an elementary teacher (kindergarten through 8<sup>th</sup> grade) at a school in southwestern Detroit, where Spanish is the first language of a majority of the students, for a three-year period from October 1, 2005 to September 30, 2008. As indicated in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which Citizenship and Immigrations Services (CIS) utilizes as an authoritative source of information about the educational and other qualifications for specific occupations, all 50 States and the District of Columbia require public school teachers to be licensed. *See Handbook*, 2006-07 edition, at 228. In addition, all states require general education teachers to have completed a bachelor's degree, a teacher training program, and practice teaching experience. *See Handbook*, *id.* at 228-29. CIS has held that public school teachers qualify as a specialty occupation. With respect to the licensing requirements for public school teachers, the *Handbook* contains the following additional information:

Many states also offer alternative licensure programs for teachers who have a bachelor's degree in the subject they will teach, but who lack the necessary education courses required for a regular license. Many of these alternative licensure programs are designed to ease shortages of teachers of certain subjects, such as mathematics and science. Other programs provide teachers for urban and rural schools that have difficulty filling positions with teachers

from traditional licensure programs. Alternative licensure programs are intended to attract people into teaching who do not fulfill traditional licensing standards, including recent college graduates who did not complete education programs and those changing from another career to teaching. In some programs, individuals begin teaching quickly under provisional licensure. After working under the close supervision of experienced educators for one or two years while taking education courses outside school hours, they receive regular licensure if they have progressed satisfactorily. In other programs, college graduates who do not meet licensure requirements take only those courses that they lack and then become licensed. This approach may take one or two semesters of full-time study. States may issue emergency licenses to individuals who do not meet the requirements for a regular license when schools cannot attract enough qualified teachers to fill positions. Teachers who need to be licensed may enter programs that grant a master's degree in education, as well as a license.

*Handbook, id.*, at 229. The record establishes that the beneficiary earned a bachelor of arts in political science from the University of Windsor in Windsor, Ontario, in June 2000. The record shows that the beneficiary began graduate studies in education at Wayne State University in the fall of 2001, but an academic transcript issued in August 2005 shows that he had not earned a degree at that time. The beneficiary is eligible for the subject teaching position, the petitioner declares, as a participant in the alternative certification program jointly sponsored by Detroit Public Schools and Wayne State University called the "Limited License to Instruct (LLI) Program." The alternative teaching certificate available through the LLI program allows the employment of individuals with reasonable qualifications, such as a bachelor's degree, successful work experience and/or bilingual competency, if children would otherwise be deprived of an education.<sup>1</sup> Under the LLI program Detroit Public Schools (DPS) identifies teacher candidates and submits applications on their behalf to the Michigan Department of Education (MDE), which reviews the applications and issues LLI certificates to DPS for those individuals it deems qualified. By letter dated July 31, 2002, DPS notified the beneficiary that he was eligible to teach elementary Spanish in the LLI program. The beneficiary was advised that his name would "be placed in the 2002-2003 LLI Eligibility Pool and forwarded to principals for consideration" and that "[c]andidates will be selected from the eligibility pool as vacancies occur throughout the school year."

In her decision the director noted the absence of evidence that the beneficiary's baccalaureate degree in political science from the University of Windsor is equivalent to a baccalaureate degree from a U.S. college or university. The beneficiary's transcripts, the director determined, did not establish that he had the education or experience to qualify him for a teaching position. In the director's view, the documentation of record established only that the beneficiary was eligible for a limited license to teach in the State of Michigan, not that he was currently licensed to teach in the public schools at the time the petition was filed. The director

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<sup>1</sup> The LLI program is consistent with the rule codified in the State of Michigan's Teacher Certification Code, R 390.1145 – "Permits in emergency situations" – which reads as follows:

Rule 45. In emergency situations and on recommendation of the superintendent of a local or intermediate school district, the state board may issue a permit for a candidate with reasonable qualifications if a candidate who meets the requirements for obtaining a substitute permit or a full-year permit is not available and if failure to authorize this emergency permit will deprive children of an education. The permit shall be issued for a specific period of time under emergency circumstances. A labor dispute is not an emergency circumstance.

concluded that the record failed to establish that the beneficiary qualifies to perform services in the specialty occupation.

On appeal the petitioner reiterates its contention that the beneficiary is eligible for an alternative teaching credential in accordance with the State of Michigan's LLI program, and is therefore qualified to perform services in the specialty occupation.

The AAO determines that the beneficiary met the licensure requirements of the State of Michigan and the petitioner to teach elementary Spanish in the Detroit public school system at the time of the MDE's letter to DPS in July 2002, which advised that the beneficiary was being placed in the LLI eligibility pool for the academic year 2002-03. There is no evidence in the record, however, that the beneficiary remained in the LLI eligibility pool during subsequent academic years. The AAO notes the language in the State of Michigan's Teacher Certification Code specifying that emergency permits are to "be issued for a specific period of time." The instant petition was filed on May 18, 2005 and seeks H-1B classification for the beneficiary for a three-year period commencing on October 1, 2005. The record does not show that the beneficiary had an LLI teaching certificate at the time this petition was filed, or that he was in the LLI eligibility pool for the 2005-06 and subsequent academic years.

Even if the beneficiary did have an LLI certificate at the time the petition was filed, the letter from DPS of July 31, 2002 expressly indicated that placement in the LLI eligibility pool did not mean that the beneficiary would have a job in the coming school year. Rather, the beneficiary's name was to be "forwarded to principals for consideration" and that candidates would be selected "as vacancies occur throughout the school year." Thus, DPS was not obliged to select the beneficiary, and would not do so unless there was a need. Even in the 2002-03 school year, therefore, it is unclear from the evidence of record whether there was a teaching position available for the beneficiary. That situation applies equally for the three-year time period of H-1B classification (2005-2008) requested in the instant petition.

Thus, the record does not establish that the beneficiary possessed the requisite licensure under the LLI program to teach elementary Spanish in the Detroit public school system at the time the instant petition was filed in May 2005, that he was on the LLI eligibility list during the period of requested H-1B classification commencing in October 2005, or that there was a teaching position available for the beneficiary under any circumstances.

Furthermore, the AAO agrees with the director that the record does not contain documentary evidence, such as a report from an academic credentials evaluation service, that the beneficiary's baccalaureate degree in political science from the University of Windsor, a Canadian school, is equivalent to a baccalaureate degree in the field from an accredited U.S. college or university. Establishing such degree equivalency is required for an alien to qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) to perform services in a specialty occupation.

For the reasons discussed above, the AAO determines that the petitioner has failed to establish that there is a position in a specialty occupation available for the beneficiary or that the beneficiary is qualified to perform services in that occupation.

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 dismiss the appeal.

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