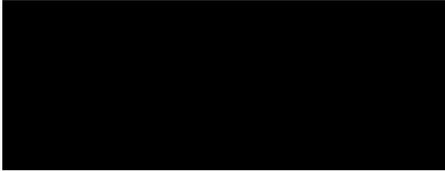


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
PUBLIC COPY

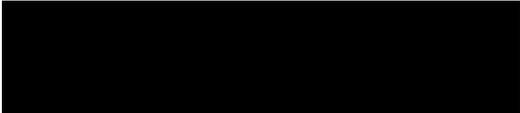


D2

AUG 23 2007

FILE: LIN 06 005 50737 Office: NEBRASKA SERVICE CENTER Date:

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 learning and childcare center. It seeks to employ the beneficiary as a preschool teacher. The petitioner 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 proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief indicating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 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 with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a preschool teacher. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Instruct children in activities designed to promote social, physical, and intellectual growth needed for primary school;
- Plan individual and group activities to stimulate growth in language, social, and motor skills, such as learning to listen to instructions, playing with others, and using play equipment;
- Participate in faculty and professional meetings and educational conferences and teacher training workshops; and
- Review students' progress with their parents.

The petitioner requires a minimum of a bachelor's degree with a specialized major in education, mathematics or social sciences for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for preschool teachers in a private school setting. The *Handbook* notes that all 50 States and the District of Columbia require public school teachers to be licensed. Licensure, however, is not required for teachers in private schools. All States require public school general education teachers to have a bachelor's degree and to have completed an approved teacher training program with a prescribed number of subject and education credits, as well as supervised practice teaching. The education and teacher training requirements, however, do not apply to

teachers in private school settings. Thus, there is no requirement that the beneficiary have a license, teacher training, or a degree in any specific specialty to enter into the proffered position. The petitioner has failed to establish the criterion listed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of that assertion submits copies of 11 job advertisements for preschool teachers or related positions. Of the 11 advertisements, five require a bachelor's degree, but do not state that the degree need be in any particular educational discipline. One requires a bachelor's degree in elementary education. Two require a degree in early childhood education or a [REDACTED] credential).¹ One requires a high school diploma but prefers a degree in child development. One requires applicants to be 18 years of age with some experience in the teaching field, but desires teachers with a degree or who are working towards a degree. The remaining advertisement indicates that a degree is preferred. The advertisements submitted do not establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. The petitioner also submitted a letter from the director of the [REDACTED] who states that his center requires faculty members to hold a bachelor's degree or a group leader certification from the [REDACTED]. Documentation submitted by the petitioner indicates that Colorado requires group leaders in childcare/daycare facilities to be at least 18 years of age and have a bachelor's degree, hold a two-year college degree in child development or early childhood education, a [REDACTED] or other department-approved credential, or have other combinations of education and experience. The Colorado regulations for group leaders do not require a baccalaureate level education. The petitioner has failed to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for entry into the proffered position, and offers no evidence in this regard. As such, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the proffered position, as described by the petitioner, do not appear to be so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor do the duties appear to be so complex or unique that they can only be performed by individuals with a degree in a specific specialty. The evidence presented by the petitioner does not establish that the duties of the proffered position are any more specialized, complex or unique than those normally performed by preschool teachers in the industry who are not required to possess a baccalaureate level education. The duties to be performed by the beneficiary are routinely performed in the industry by individuals who do not have a baccalaureate level education. The petitioner has not established the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), or the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

¹ According to the Council for Professional Recognition website [REDACTED] a CDA credential requires applicants to meet the following: be 18 years of age or older; have a high school diploma or GED; have 480 hours of experience working with children within the last five years; and have 120 hours of formal child care education (education may be for credit or non-credit) in the past five years. A baccalaureate level education is not required.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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