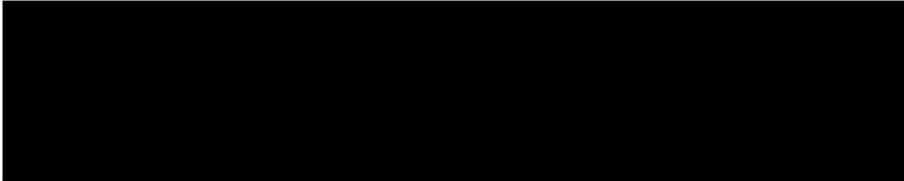


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

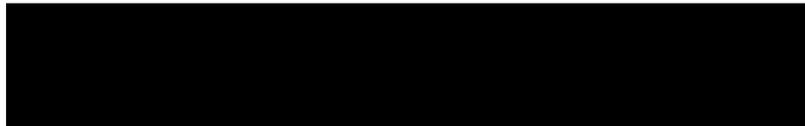
**PUBLIC COPY**



b2

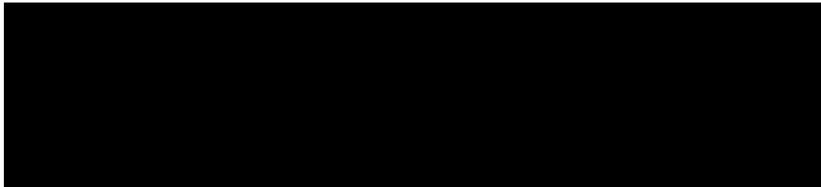
FILE: WAC 04 198 53056 Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2007

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 provider of residential care for developmentally disabled individuals and seeks to employ the beneficiary as a teacher (developmentally disabled). 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, the petitioner submits a brief stating 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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a teacher (developmentally disabled). 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 the evidence provided in the petitioner's response to the director's request for evidence, the beneficiary would:

- Act and be responsible as a program monitor for assigned consumers;
- Deliver group learning experiences to achieve maximum benefits from the petitioner's services;
- Implement and maintain program teaching curricula;
- Participate in consumer assessment, planning and evaluation processes;
- Implement and maintain individual program plans based on specific needs;
- Assure training is age appropriate, meaningful and realistic;
- Maintain data regarding consumer's daily activities, progress and behavior;
- Provide training and support in personal self care, including assisting with the activities of daily living, feeding, toileting, and transferring;
- Implement meaningful activities in the community;
- Provide training and support in offsite activity center settings/recreational settings; and
- Assure compliance with all safety and confidentiality standards.

In its support letter dated April 27, 2004, the petitioner states that the services it provides include, but are not limited to: recreation and leisure activities; health and body conditioning; and individual skills development, communication, socialization, self-advocacy, and self-care. The duties to be performed by the beneficiary were set forth in that letter as follows:

- Work on through direct counseling;
- Help clients identify their concerns, consider effective solutions, find reliable resources, and arrange for services that can help them;
- Review eligibility requirements, and help fill out forms and applications; and
- Visit clients on a regular basis and provide support during crisis.

The petitioner finds the beneficiary qualified to perform the duties of the proffered position by virtue of her foreign education. That education has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in elementary education with a concentration in English, a master's degree in psychology, and an additional 36 semester units of graduate work in philosophy from an accredited institution of higher learning in the United States.

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 fall within those noted for social and human service assistants, not teachers (developmentally disabled) as stated by the petitioner. Social and human service assistants is a generic term for people with a wide array of job titles, including human service worker, case management aide, social work assistant, community support worker, mental health aide, community outreach worker, life skill counselor, or gerontology aide. They usually work under the direction of workers from a variety of fields, such as nursing, psychiatry, psychology, rehabilitative or physical therapy, or social work. These workers provide direct and indirect client services to ensure that individuals in their care reach their maximum level of functioning. For example, they assess clients' needs, establish their eligibility for benefits and services such as food stamps, Medicaid, or welfare, and help them to obtain such benefits. They may also arrange for transportation and escorts, if necessary, and provide emotional support, and keep records of client progress while reporting to supervisors and case managers. Social service assistants also organize and lead group activities, assist clients in need of counseling or crisis intervention, and in group home settings, assist clients who need assistance in personal hygiene and daily living skills. The duties to be performed by the beneficiary fall within these duties. The *Handbook* notes that while a bachelor's degree is usually not required for entry into this occupation, employers increasingly seek individuals with relevant work experience or education beyond high school. Certificates or associate degrees in subjects such as social work, human services, gerontology, or one of the social or behavioral sciences meet most employer requirements. Some jobs may require a bachelor's or master's degree in human services or a related field such as counseling, rehabilitation, or social work. The minimum requirement for entry into the field is not a baccalaureate degree in a specific specialty. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner states that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations and submits two job advertisements for special education teachers. These advertisements, however, are of no evidentiary value as the proffered position is not that of a special education teacher, but of a social and human service assistant. The petitioner has not established the referenced criterion at

## 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner states that it normally requires a degree for the proffered position and submitted copies of two prior employee diplomas and H-1B approval notices in support of that assertion. The petitioner also references the prior approval for the present petition which is a petition for continuation of previously approved employment. The documentation submitted does not establish that the offered position qualifies as a specialty occupation under this criterion. The petitioner has been in business since 1980 and has 25 employees. Its hiring of two degreed employees in the position since 2001 does not establish a history of hiring only degreed employees in the position. The record does not reflect how many of the 25 employees are in similar positions. Further, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Counsel asserts that Citizenship and Immigration Services (CIS) has already determined that the proffered position is a specialty occupation since this is a petition for previously approved employment without change. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. Citizenship and Immigration Services (CIS) is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

---

<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

The record does not establish that the duties to be performed by the beneficiary are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor does the record establish that the duties are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties as described appear to be routine for social and human services assistants in the industry and regularly performed by individuals with less than a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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.

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.