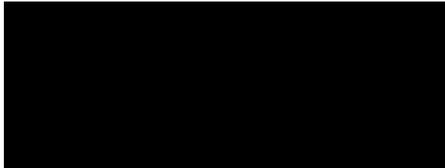


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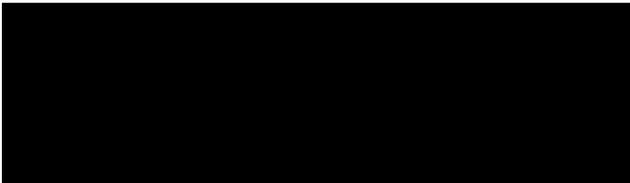
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FILE: SRC 05 227 51408 Office: TEXAS SERVICE CENTER Date: **JUL 23 2007**

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 director of the service center 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 computer training and education business that seeks to employ the beneficiary as a special-needs teacher. The petitioner, therefore, 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 determining that the record failed to establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with a brief, dated February 21, 2006, from the petitioner and a brief, dated April 12, 2006, from counsel. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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) consistently interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. 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 (5th Cir. 2000). The critical element is not the title of the position nor 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.

The petitioner seeks the beneficiary’s services as a special-needs teacher. Evidence of the beneficiary’s duties includes: the petitioner’s August 10, 2005 letter in support of the petition and the petitioner’s November 7, 2005 response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

- Develop and implement strategies to meet the needs of students with a variety of conditions;
- Instruct students in academic subjects, using a variety of techniques such as phonetics, multisensory learning, and repetition, in order to reinforce learning and to meet students’ varying needs and interests;
- Instruct students in daily living skills required for independent maintenance and self-sufficiency, such as hygiene, safety, and food preparation;
- Confer with parents, administrators, testing specialists, social workers, and professionals to develop individual educational plans designed to promote students’ educational, physical, and social development;

- Modify the general education curriculum for special-needs students based upon a variety of instructional techniques and technologies;
- Confer with other staff members to plan and schedule lessons promoting learning, following approved curricula;
- Confer with parents or guardians, teachers, counselors, and administrators in order to resolve students' behavioral and academic problems;
- Coordinate placement of students with special needs into mainstream classes;
- Employ special educational strategies and techniques during instruction to improve the development of sensory- and perceptual-motor skills, language, cognition, and memory; [and]
- Establish and enforce rules for behavior and policies and procedures to maintain order among the students for whom they are responsible.

The director found that the petitioner had not demonstrated that the proffered position, which is not a teacher with a public school system, requires a bachelor's degree. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that although the petitioner titled the proffered position "special needs teacher," it is similar to an elementary teacher, an occupation that requires the minimum of a Bachelor of Science degree in education. Counsel contends that the proposed duties, which entail providing supplemental instructional classes to elementary and secondary school children, are the duties of a professional teacher and that, as the petitioner is not a public institution, the proffered position does not require a license.

The petitioner's president reiterates the proposed duties that were provided in his August 10, 2005 letter. He states, in part, that the proffered position meets all criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), and that, according to the Department of Labor's *O*Net*, the proffered position is a "Job Zone 4" occupation with an SVP range (referring to the *Dictionary of Occupational Titles (DOT)*) of 7 to 8, which requires a bachelor's degree. For supporting documentation, he submits copies of Internet job postings and the degree of another employee.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

At the outset, the exact nature of the petitioning entity is unclear.¹ The petitioner's occupational license reflects the petitioner's business as "computer instructor" and "computer repair." It is thus not clear that the beneficiary would perform duties such as "[instructing] students in daily living skills required for independent maintenance and self-sufficiency, such as hygiene, safety, and food preparation" and "[conferring] with parents or guardians, teachers, counselors, and administrators in order to resolve students' behavioral and academic problems," as claimed in the petitioner's August 10, 2005 letter. Further, although in response to the director's RFE, the petitioner further described the proposed duties as "[rendering] services in after school programs using computer labs, educative software and specialized training" and "provid[ing] help with homework, tutoring and other learning activities," the record contains no evidence that the petitioner has any students for the beneficiary to teach. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Of further note, although information on the petition reflects that the petitioner is a computer training and education business with five employees and a gross annual income for 2005 of approximately \$150,000.00, the record contains no evidence in support of these claims, such as quarterly wage reports and federal income tax returns. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Turning to the criteria to establish the proffered position as a specialty occupation, the AAO will first discuss the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The petitioner's initial description of the beneficiary's duties borrows from the *Handbook's* report on special education teachers and their work with children with various disabilities.² However, the petitioner has not provided documentary evidence that it is licensed to provide any type of special education services. The AAO declines to speculate on the types of "special education" services the petitioner would include in its after school programs.

In response to the director's RFE, the petitioner indicates the proffered position is a position that provides after school help with homework, tutoring, and other learning activities using computer labs, educative software, and specialized training. This position corresponds most closely to the *Handbook's* discussion of self-enrichment teachers. The *Handbook* 2006-2007 edition reports: "self-enrichment teachers provide instruction in a wide variety of subjects that students take for personal enrichment or self-improvement." The

¹ A search of the petitioner's website at <http://www.centumq.com/homeizq.htm> finds that the petitioner is a "full fledged IT Solutions company" providing "IT solutions with a strong focus on hi-end cutting edge technology, in the areas of client/server, e-commerce, web applications, Multimedia and Network Support, Home and Business Automation, as well as, High Tech Training."

² The *Handbook* also reports that all 50 States and the District of Columbia require special education teachers to be licensed, although some States may offer alternative routes to licensing. In this matter, the petitioner indicates its position does not require licensing, thus undermining the "special needs" or "special education" aspects of the initial description.

Handbook indicates: "[t]he main qualification for self-enrichment teachers is expertise in their subject area." Thus, the *Handbook* does not specify that a bachelor's degree in a specific discipline is a requirement for a self-enrichment teacher for entry into the occupation.

The petitioner in this matter has submitted a general description of the proffered position that in part appears at odds with its stated purpose. The AAO cannot conclude that the duties of the proffered position comprise the duties of a specialty occupation.

As the duties of the proffered position are ill-defined and do not specifically correspond to the petitioner's business the petitioner cannot establish a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The AAO also acknowledges the petitioner's contention that the *DOT* recognizes that a teacher must have a specific vocational preparation (SVP) of 7 to 8, which represents a combination of training and experience over two years and up to and including four years. The petitioner's reference to and assertions about the relevance of information from *O*Net* and the *DOT*, however, are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require. Further, although the petitioner claims that the proffered position entails the specialized and complex duties of a professional teacher, an overview of an "occupation" is insufficient to establish the proffered position as a specialty occupation. A petitioner cannot establish employment as a specialty occupation by describing the duties of the employment in the same general terms as discussed in sources outlining occupations. As discussed above, the petitioner must provide evidence of the duties that comprise the proffered position as it relates specifically to the petitioner's business.

The record does not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the generally described position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. The AAO acknowledges the Internet job postings submitted by the petitioner on appeal but observes that the advertisers are a tutoring business, the Sylvan Learning Center, and a private school for children with autism. The petitioner has not provided evidence that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, level of revenue, or type of business. The AAO observes further that none of the advertisers require a bachelor's degree in a specific discipline. To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position

requires the attainment of a bachelor's or higher degree in a specialized field of study. When a job can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). The advertisements submitted do not establish that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations. Moreover, as the nature of the proffered position is unclear, the duties listed in the advertisements may not be established as parallel to those outlined by the petitioner.

The record does not include any evidence from individuals, firms, or professional associations regarding an industry standard. Again, as discussed above, the duties that comprise the proffered position are described in generalized terms that do not indicate the necessity of a body of highly specialized knowledge attained by at least a baccalaureate degree level of coursework in a specific specialty. The petitioner has not described a position that is so complex or unique that only an individual with a degree can perform the work associated with the position. As observed above, the record presents a confusing picture of the duties of the position. The petitioner has not distinguished the proffered position, based on the complexity or unique nature criteria, from similar but non-degreed employment under the second prong of the criterion. The described duties are at most the duties of a self-enrichment teacher, duties that are not associated with a bachelor's degree in a specific discipline. The petitioner has not identified any specific duties that elevate the position to one that would require the education obtained through a four-year university program. The petitioner has not established that a baccalaureate or higher degree or its equivalent is common to the industry in parallel positions among similar organizations or, in the alternative, is so complex or unique that it can be performed only by an individual with a degree in a specific discipline. The petitioner has failed to establish the alternative prongs of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas to aid in determining the third criterion. On appeal, the petitioner has submitted a copy of the foreign degree of [REDACTED] as evidence that it normally requires a degree for the proffered position. The record, however, contains no evidence that this individual is employed by the petitioner in the capacity of a special-needs teacher. Moreover, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. The petitioner has not sufficiently described the duties of the proffered position or provided other documentary evidence that would establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Neither has the petitioner satisfied the requirements of the fourth criterion by distinguishing the proffered position based on the specialization and complexity of its duties. On appeal, the petitioner asserts that the proposed duties require highly specialized knowledge in a variety of areas, including principles and methods for curriculum and training design, teaching and instruction for individuals and groups, and human behavior and performance. As indicated earlier in this decision, the nature of the petitioner's business is unclear, and the

petitioner has not demonstrated that it has any students for the beneficiary to teach. Further, as discussed above, it is not clear that the beneficiary would perform duties such as “[instructing] students in daily living skills required for independent maintenance and self-sufficiency, such as hygiene, safety, and food preparation” and “[conferring] with parents or guardians, teachers, counselors, and administrators in order to resolve students’ behavioral and academic problems.” Again, the petitioner’s description of the duties of the proffered position provides no understanding of how they relate to the specific needs of the petitioner and thus cannot, without further detail, establish that the proffered position’s duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not provided sufficient information to establish that the duties as described are duties that correspond to a position that is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 not sustained that burden.

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