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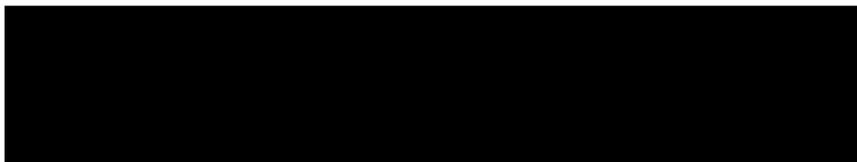
FILE: LIN 04 157 52061 Office: NEBRASKA SERVICE CENTER Date: JUN 04 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, revoked the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded.

The petitioner operates early childhood learning centers in the States of Kansas and Missouri and claims to have 44 employees. The petitioner seeks to employ the beneficiary as a preschool teacher. Accordingly, 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 record includes: (1) the May 7, 2004 Form I-129 and supporting documents; (2) the director's May 18, 2004 request for further evidence (RFE); (3) counsel's July 13, 2004 response to the director's RFE and supporting documents; (4) the director's July 27, 2004 approval; (5) the director's December 21, 2004 notice of intent to revoke approval (NOIR); (6) counsel's January 14, 2005 rebuttal to the NOIR; (7) the director's August 3, 2005 decision revoking approval of the petition; (8) counsel's September 16, 2005 untimely appeal; (9) the director's October 16, 2005 notice that the untimely appeal would be treated as a motion; (10) the director's February 14, 2006 motion decision; and (11) counsel's March 16, 2006 Form I-290B and brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

On December 21, 2004 the director issued a NOIR and ultimately revoked approval of the petition on August 3, 2005 determining that the petitioner had failed to establish that the proffered position is a specialty occupation. The director affirmed the decision on February 14, 2006. On appeal, counsel for the petitioner submits a brief and resubmits documents already in the record.

The regulation at 8 C.F.R. § 214.2(h)(11)(iii), which governs revocations that must be preceded by notice, states:

- (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
 - (2) The statement of facts contained in the petition was not true and correct; or
 - (3) The petitioner violated terms and conditions of the approved petition; or
 - (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
 - (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

- (B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The director issued the NOIR on December 21, 2004, which stated in pertinent part:

It has now come to the attention of this Service that the approval of your petition was not clearly correct as the position of pre-school teacher is not usually recognized as a specialty occupation, one which requires the services of an individual with, at minimum, a bachelor's degree in a specific field of study.

The director's NOIR does not comply with the notice requirements at 8 C.F.R. § 214.2(h)(11)(iii). To properly issue a NOIR, the director must: (1) specify the part or parts of 8 C.F.R. § 214.2(h)(11)(iii)(A) under which the director proposes to revoke the approved petition; (2) for each section of 8 C.F.R. § 214.2(h)(11)(iii)(A) specified as a basis for revocation, present a detailed statement of the factual grounds that justify the proposed revocation; and (3) specify the time period (of at least 30 days) allowed for the petitioner to submit a response to the NOIR.

The director's brief statement indicating that the position of preschool teacher is not usually recognized as a specialty occupation, does not specify the particular provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A) under which the director proposed to act. Moreover, this brief statement does not detail factual grounds for the basis of the director's NOIR. Thus, the petition will be remanded in order for the director to properly issue a notice of intent to revoke.

The AAO agrees with the director's sentence indicating that the record does not establish that the position is a specialty occupation and will discuss the deficiencies of the record.

Section 214(i)(1) of the Immigration and Nationality Act (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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) 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.

In a May 6, 2004 letter in support of the petition, counsel for the petitioner asserted that a preschool teacher position is a specialty occupation. Counsel referenced: the Department of Labor's *Occupational Outlook Handbook (Handbook)*, and contended that the *Handbook* reported that employers require preschool teachers to have at least a bachelor's degree in education or a related field; a Board of Immigration Appeals decision analyzing the term profession; and several unpublished decisions. Counsel also indicated that the Specific Vocational Preparation (SVP) rating for this occupation is 7.

In a letter appended to the petition, the petitioner indicated its desire to hire the beneficiary as a preschool teacher. The petitioner stated:

Her duties involve instructing our preschoolers in activities designed to promote social, physical and intellectual growth, planning individual and group activities to stimulate growth in language, social and motor skills and assessing the special needs of individual students and groups. In addition she must provide educational guidance and mentoring to teacher assistants and teacher aides. The preschool teacher is responsible for daily maintenance of a fully equipped classroom. Must maintain discipline and keep attendance records of children.

The petitioner indicated the minimum academic qualification for this position is that of a bachelor's degree in early childhood education or child development or a bachelor's degree in elementary education. The record also contains a job description for a preschool teacher that lists the duties of the position as:

- Instruct preschool children in activities designed to promote social, physical, and intellectual growth.
- Develop and implement essential cognitive foundations for the pre-school [sic] child to teach the child how to learn, how to think for itself [sic] and how to solve problems.
- Create an intellectually stimulating environment that engages preschool children in the learning process.
- Exhibit exceptional understanding, sensibility, and dynamic creativity in early childhood education.
- Develop a curriculum that emphasizes [sic] creativity and problem solving.
- 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.
- The preschool teacher reports the children's progress to the parents and needs to assess the special needs of individual students and groups.
- Provides educational guidance and mentoring to teacher assistants and teachers aids [sic].
- The preschool teacher is responsible for daily maintenance of a fully equipped classroom.
- Must maintain discipline and keep attendance records of children.

The petitioner also provided copies of six job announcements for positions of: (1) a preschool teacher for a speech and language center that required a bachelor's degree in early childhood or child development; (2) a preschool teacher for an undisclosed organization that required a four-year degree in early childhood education or a similar field, two years of preschool teaching experience, and New Jersey teacher certification preferred; (3) a preschool teacher for a child care learning center that required a bachelor's degree in early childhood education or elementary education; (4) a teacher/childcare professional for a treatment center for children with special needs that required a bachelor's degree in an unspecified discipline; (5) a preschool teacher for a university that required an ECE degree; and (6) an early childhood educator to supervise all child development teachers, day care providers, and volunteers that required a bachelor's degree in early childhood education or related field.

In response to the director's RFE, the petitioner provided a July 13, 2004 letter listing four of its employees who had obtained four-year degrees or higher in the fields of early childhood education or education. The petitioner did not provide evidence of the educational levels of its remaining 40 employees. The petitioner also provided copies of ten job announcements for positions of: (1) a part-time Gymboree play and music teacher requiring a college degree and preferring a degree in music or early childhood education; (2) an early childhood teacher for a preschool that listed a bachelor's degree in the education field but did not indicate if the degree was preferred or required or that the degree was in a specific discipline; (3) a therapeutic preschool

and kindergarten teacher for a psychodynamic nursery that required a four-year degree in education, psychology, early childhood development or other related field; (4) a preschool teacher for a child care center that indicated the successful candidate would possess a bachelor's degree in early childhood education or elementary education; (5) a teacher/tutor for a learning center that required the tutor to have a bachelor's degree (or higher) in an unspecified discipline; (6) a teacher for a child care organization that listed a bachelor's degree in the education field but did not indicate whether the degree was preferred or required and did not indicate that the degree should be in a specific discipline; (7) an early childhood teacher for a preschool program that listed a bachelor's degree in the education field but did not indicate whether the degree was required or preferred and did not indicate that the degree should be in a specific discipline; (8) a teacher for special education, elementary education and early childhood education requiring a bachelor's degree in education and preferring New York certification; (9) an early childhood educator for a museum that indicated the ideal candidate must have an undergraduate degree in early childhood education; and (10) a preschool teacher for a church-related preschool that indicated a bachelor's degree in child development was preferred.

The petitioner also provided an undated opinion authored by [REDACTED] of Teachers College, Columbia University, Department of Curriculum and Teaching. [REDACTED] states that he is qualified to comment on the educational requirements for a preschool teacher as he has over 15 years of experience as a professor and as a Chair of the Department of Curriculum and Teaching for over six years. [REDACTED] repeats the description of the duties of the proffered position and opines: "[s]chools that seek to employ a Pre-School Teacher require prospective candidates to possess at least a Bachelor's degree in Education or a related field, from an accredited institution of higher learning." [REDACTED] further opines: "[o]nly in the Bachelor's degree programs in Early Childhood Education or a related field does the teacher learn the science of educating young children and acquires the philosophical, societal and psychological knowledge that is the basis for all pedagogical action." [REDACTED] indicates that skills required for curriculum development, preparing and following lesson plans and activities that are appropriate for each child's development and development level are taught in courses in education, early childhood education, child psychology and related areas and that the skills necessary to serve as a mentor to teaching assistants and to maintaining discipline are skills taught in courses in education and educational methods. [REDACTED] concludes that the level of skill necessary for a preschool teacher is obtained through at least a college-level academic education.

On the basis of this limited information, the director approved the petition.

On December 21, 2004, the director informed the petitioner that the position of preschool teacher is usually not recognized as a specialty occupation that requires a bachelor's degree in a specific field of study as a minimum requirement for entry into the position. The director granted the petitioner 30 days to respond to the director's NOIR.

In a January 14, 2005 rebuttal to the NOIR, counsel for the petitioner asserted that the NOIR was legally defective as it did not provide a detailed statement of the grounds for the revocation. Counsel referenced the AAO's unpublished decisions wherein the AAO analyzed a position for a preschool teacher and ultimately determined that the position was a specialty occupation and asserted these decisions correctly reflected CIS policy. Counsel noted that the director had not indicated why Professor Borland's opinion should not be relied upon and submitted

a second opinion authored by [REDACTED] to reinforce [REDACTED] opinion. Counsel asserted that CIS should give considerable weight to the views and needs of the petitioner, rather than second guess its business needs and that it appeared the director was improperly relying on "a standardized government classification" by relying only on the *Handbook* when determining the proffered position was not a specialty occupation.

In his January 13, 2005 opinion, [REDACTED] Professor and Director of the International Center for Curriculum Studies at Seattle Pacific University, noted that the title of "preschool teacher" is a general title. [REDACTED] opined that when the *Handbook* indicated only a two-year associate's degree was required it was referring to an entry-level assistant teaching position. [REDACTED] acknowledged that the *Handbook* could be interpreted to mean that not all preschool teaching positions required a bachelor's degree, but observed that this does not mean that there are no cases in which a preschool teacher should typically have a baccalaureate degree as a minimum educational requirement. [REDACTED] noted that one of the duties of the proffered position was to lead and supervise teacher's aides and teacher's assistants. Thus, [REDACTED] opined, the individual holding the proffered position must be highly qualified and that the duties and responsibilities associated with the proffered position would include duties that would require a four-year college degree as the minimum educational requirement. [REDACTED] also noted that the position required curriculum and program development necessary to meet the needs of the children and to meet the education standards required by the school and the state and that the individual in the position must meet with the parents and associates to implement plans to improve the progress and chance for success for each individual student. [REDACTED] concluded that these duties involved "the theoretical and practical knowledge gained in a baccalaureate degree program specifically designed to prepare teachers for such classroom analysis."

On August 3, 2005, the director revoked approval of the petition determining that the *Handbook* indicated that a baccalaureate or higher degree in a specific specialty is not normally the minimum requirement for entry into an unlicensed position of preschool teacher. The director also noted that the Department of Labor's *Dictionary of Occupational Titles (DOT)* and the *O*NET* classification system are not directly related to membership in a profession; thus the SVP ratings given by the *DOT* and *O*NET* did not persuade him that the proffered position was a specialty occupation. The director determined that the petitioner had not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The director observed that [REDACTED] opinion was not based on any objective surveys, research, or statistics demonstrating that a baccalaureate degree is a minimum requirement for employment in the occupation and determined that neither [REDACTED] nor the petitioner had provided documentary evidence to support the professor's opinion. The director also noted that while the *Handbook* indicated some State licensing requirements include the requirement of a bachelor's degree for public preschool teachers, the petitioner as a private facility was not subject to any of those State licensing requirements. The director further noted that he was not required to approve applications or petitions where eligibility had not been demonstrated, citing *Matter of Khan*, 14 I&N Dec. 397 (BIA 1973; *Matter of M-*, 4 I&N Dec. 532 (BIA 1951; BIA, A.G. 1952). The director determined that the petitioner had not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The director also found that the petitioner had not submitted information regarding the duties of its four employees who held bachelor's or higher degrees and had not described how those individuals fit within the

petitioner's organizational structure. The director determined that the petitioner had not provided sufficient information to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The director also determined that the general duties of the proffered position were analogous to the position of a preschool teacher and that the petitioner had not described specific duties associated with the position that are specialized or complex, thus the petitioner had not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

On appeal, counsel for the petitioner asserts that the director's decision can be summarized in a single sentence; a preschool teacher is not a specialty occupation. Counsel submits his initial letter in support of the petition, his response to the director's RFE, and his rebuttal to the director's NOIR as evidence in support of the appeal. Counsel observes that the director rejected all the authorities and expert testimony offered in support of this matter and overlooked or disregarded the job announcements submitted that indicated a bachelor's degree is a requirement where the job description is similar to the job description in this matter. Counsel asserts that the director abused his discretion in view of the fact that the director had previously approved H-1B petitions for preschool teachers and had not articulated why the previous decisions were wrong. Counsel contends that an analysis of the job description in this matter and consideration of the expert testimony submitted shows that the petition was properly approved.

Counsel's assertions are not persuasive. The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to determine whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the position of preschool teacher. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With reference to preschool teachers, the *Handbook* indicates that requirements for public preschool teachers are generally more stringent than those for private preschool teachers and that private schools are generally exempt from meeting State-licensing standards. The *Handbook* does not report that private school preschool teachers must have a baccalaureate degree in a specific specialty; it notes only that private institutions prefer candidates who have a bachelor's degree in childhood education for elementary school teachers; thus, the *Handbook* does not contain information establishing that a private preschool teacher must have a baccalaureate degree in a specific specialty for entry into the occupation.

The AAO acknowledges counsel's reference to the SVP rating in reference to teachers. However, the AAO does not consider the Department of Labor's *Dictionary of Titles (DOT)* or *O*NET* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation.

The AAO has reviewed the opinions of both [REDACTED] and [REDACTED]. The AAO observes that [REDACTED] repeats the petitioner's description of the duties of the proffered position and then concludes that these duties require skills taught in education courses. For example, [REDACTED] states that only in bachelor's degree programs in early childhood education does an individual learn the science of educating young children, and that the skills for curriculum development, preparing and following lesson plans and activities appropriate for each child's development are skills taught in education or a related field in an institution of higher learning. [REDACTED] does not support his broad conclusion with any scientific,

industry or academic evidence nor does he offer an analysis explaining why teaching skills associated with curriculum development and preparing and following lesson plans for preschool children require a bachelor's degree in education or early childhood education and when an associate's degree or experience would be sufficient. In addition, the record does not contain evidence that [REDACTED] interviewed the petitioner, reviewed the petitioner's hiring practices, reviewed the petitioner's organizational hierarchy, reviewed the petitioner's curriculum, or reviewed the petitioner's day care business. [REDACTED] opinion implying that prospective candidates for the position of a preschool teacher for a private institution must possess at least a bachelor's degree in education or a related field is not substantiated in the record. There is an inadequate factual foundation established to support [REDACTED] opinion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Moreover, the *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices is at odds with [REDACTED] broadly-stated views. [REDACTED] opinion is insufficient to overcome the *Handbook's* analysis indicating that not all preschool teachers require a four-year degree in a specific discipline.

As the director observed [REDACTED] also fails to substantiate his opinion with objective surveys, research, or statistics demonstrating that a baccalaureate degree is a minimum requirement for employment in the occupation. The AAO observes [REDACTED] note that a two-year associate's degree is sufficient for some preschool teaching positions. The AAO also acknowledges [REDACTED] note that the description of the proffered position includes leading or supervising teacher's aides or teacher's assistants and [REDACTED] assumption that this particular duty elevates the proffered position to that of a specialty occupation requiring a four-year degree. Upon review of the record, however, the AAO does not find sufficient detail regarding this particular duty. As noted above, the petitioner claims to employ 44 personnel, and yet does not disclose the educational levels of 40 of the employees. The record does not contain the petitioner's organizational hierarchy, the duties of its various teachers, the number of classrooms it has, the level of teaching or childcare involved in each of the classrooms, or how the proffered position fits in with the other teaching positions. A one-sentence reference to leading or supervising teacher's aides or teacher's assistants does not establish that the position is a specialty occupation. [REDACTED] opinion is not substantiated in the record. Likewise, [REDACTED] does not substantiate his opinion that curriculum and program development and meeting with parents are duties that include the theoretical and practical knowledge gained in a baccalaureate degree program specifically designed to prepare teachers for such classroom analysis. [REDACTED] does not explain why an individual could not attain these skills through associate's degree training or experience. As in the case with [REDACTED] [REDACTED] does not indicate he has interviewed the petitioner, reviewed the petitioner's hiring practices, organizational hierarchy, curriculum, or day care business. Relying on a broadly-based description of duties, without substantive detail reinforcing or otherwise validating that the entity in question utilizes the individual's performance of those duties does not establish that the proffered position is a specialty occupation. Again, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. at 791.

Upon review of the record, the evidence does not demonstrate that the position of a preschool teacher requires the attainment of a bachelor's degree or its equivalent in a specific specialty. The petitioner has not established that the duties of the proffered position satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns 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 a particular position is so complex or unique that it can be performed only by an individual with a degree. To determine whether the petitioner's degree requirement is shared within its industry, CIS often considers whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). In this matter as observed above, the *Handbook* does not report that a private preschool teacher requires a baccalaureate degree.

The petitioner has submitted sixteen job announcements for preschool teaching positions to establish that a degree requirement in a specific discipline is common to the industry in parallel position among similar organizations. However, a review of the job announcements reveals that many of the organizations are clearly different from the petitioner's childcare business. For example, the petitioner includes job announcements from a speech and learning center, a treatment center for special needs children, a Gymboree business, a psychodynamic nursery, a learning center, a public school, and a museum. In addition, many of the organizations listed jobs that were not similar to the one described. For example, the petitioner includes job announcements for a supervisor of all teachers/daycare providers/volunteers, a play/music teacher, a therapeutic teacher, a teacher/tutor, a special education teacher, and a museum childhood educator. Further, most of the childcare organizations listing basic preschool teaching positions referenced a bachelor's degree but did not indicate whether the bachelor's degree was preferred or required and also failed to list a specific discipline as a requirement for the occupation. Finally, many of the job descriptions were brief and general in nature. Thus, the petitioner has not provided substantiating evidence that a specific degree requirement is common to the petitioner's industry in parallel positions among similar organizations. 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)).

The petitioner has also failed to establish that the proffered position is so complex or unique that only an individual with a four-year degree in a specific discipline can perform the work associated with the position. In the instant petition, the petitioner's description of the duties of the proffered position is general and does not include any duties seen as either unique or complex so that only an individual with a degree in a specific specialty could perform them. The record does not demonstrate that the proffered position has complexity or a unique nature which distinguishes it from similar but non-degreed employment under the second prong of the criterion. In this matter, a baccalaureate or higher degree or its equivalent is not the normal minimum requirement for entry into the position of a preschool teacher. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Upon review of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) the AAO finds that the petitioner has not established that it normally requires a bachelor's degree or its equivalent in a specific discipline for the proffered position. 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. In this matter, the petitioner has indicated that four of its 44 employees hold bachelor's degrees or higher in education or related fields. The AAO cannot conclude that the petitioner normally requires a bachelor's degree or its equivalent in a specific discipline when the record lacks documentary information on the majority of the petitioner's employees. 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.

In addition, 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. 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 384 (5th Cir. 2000). In this matter, the petitioner's general description of the duties of the proffered position cannot establish that the duties of the position actually require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree or higher in a specific specialty.

The petitioner has not established the proffered position as a specialty occupation under the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) which requires that the petitioner establish that 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. The petitioner does not submit a description of any specialized or complex responsibilities that would distinguish the proffered position from that of a private preschool teacher; employment the *Handbook* indicates does not impose a degree requirement. As observed above, neither [REDACTED] nor [REDACTED] sufficiently analyze or explain why the petitioner's position is more specialized or complex than the duties of an average private preschool teacher. Neither professor substantiates their opinion that the proffered position, which includes mentoring teacher's aides and assistants, must require a bachelor's level of education in a specific discipline.

Moreover, as referenced above, a general description of a position cannot establish that employment as a specialty occupation. CIS must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation to its business and what the proffered position actually requires, in order to analyze and determine whether the duties of the position require a baccalaureate degree in a specialty. Without a comprehensive description of the duties of the position and how those duties are specialized or complex and documentary evidence substantiating the specialized nature and complexity of the position, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO acknowledges counsel's assertion regarding the initial approval of the petition and the director's analysis in the revocation decision. However, prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). CIS is not required to approve applications or 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). It would be absurd to suggest that CIS or any 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).

In this matter, the petitioner has offered a general description of the proposed duties of the position and such a general description is insufficient to enable the AAO to discern that the duties of the position require the theoretical and practical application of a body of highly specialized knowledge, attained through a four-year course of study in a specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. In addition, the *Handbook* does not report that a preschool teacher would normally be required to have a bachelor's degree or higher in a specific discipline to perform the duties associated with the position. The opinions of both [REDACTED] and [REDACTED] are not based on a factual foundation obtained through a thorough analysis of the petitioner and the actual duties of the successful candidate. The record does not contain evidence that the childcare industry as a norm routinely requires preschool teachers to have a bachelor's degree in a specific discipline. The petitioner has not provided documentary evidence substantiating that it only employs preschool teachers with a bachelor's degree in a specific discipline, and more importantly the petitioner has not explained why its requirements should be accepted when the childcare industry does not normally require private preschool teachers to have a bachelor's degree as a minimum requirement to enter into the position. The petitioner has not offered evidence establishing that the duties of its particular proffered position encompass more complex, or unique, or specialized duties than the duties of an average preschool teacher. Upon review of the totality of the record, the record fails to reveal any evidence that the offered position requires a bachelor's degree, or its equivalent, in a specific discipline. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations. Therefore, the AAO agrees that approval of the petition should be revoked based upon the current record.

The AAO notes counsel's reference to unpublished decisions approving the position of preschool teacher as a specialty occupation. The records of those matters are not before the AAO and thus it is not appropriate to analyze the information in those records regarding the sufficiency of the descriptions and other evidence as it relates to the duties of a specialty occupation. In this matter, however, the evidence of record does not demonstrate that the duties of the proffered position are the duties of a specialty occupation. Moreover, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Although the AAO finds that the record does not support an approval of this matter, the director failed to adequately articulate the deficiencies of the record. Thus, the matter will be remanded for the director to issue a new notice of intent to revoke containing a detailed statement of all the grounds for revocation, and accord

the petitioner 30 days to submit evidence in rebuttal, as provided in 8 C.F.R. § 214.2(h)(11)(iii)(B). If the director issues a new decision adverse to the petitioner, the director shall certify it to the AAO for review.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's August 3, 2005 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.