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02

JUN 23 2007

FILE: WAC 05 154 51508 Office: CALIFORNIA 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 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 Montessori school that seeks to employ the beneficiary as a Montessori 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 because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence including: a letter from the petitioner; a new credentials evaluation for the beneficiary; a “Preschool/Kindergarten Montessori Teaching Diploma” reflecting the “Date of Certification” as October 6, 2005, which is subsequent to the May 6, 2005 filing date of the petition; and copies of previously submitted documentation.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. In this matter, the beneficiary’s eligibility to perform the duties of a specialty occupation are based upon her education, training, and work experience. As such, in a July 5, 2005 request for additional evidence, the director specifically requested an evaluation from an authorized official of an accredited college or university that has a program for granting college-level credit based on an individual’s training and/or work experience. In response, the petitioner submitted an evaluation from a credentials evaluation service. As correctly pointed out by the director in his decision, a credentials evaluation service may not evaluate an alien’s work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carried no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence.<sup>1</sup> *Id.* Moreover, as noted above, the beneficiary’s “Preschool/Kindergarten Montessori Teaching Diploma” submitted on appeal is dated October 6, 2005, which is subsequent to the May 6, 2005 filing date of the petition. The petitioner must establish

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<sup>1</sup> The AAO observes that the evaluation submitted on appeal does not include substantiating evidence that the evaluator has authority to grant college-level credit for experience or training. The AAO notes the evaluator’s claim in this regard, however the record does not include evidence establishing such authority or that the State University of New York at Albany has a program for granting such credit based on an individual’s training and/or work experience.

eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation.<sup>2</sup> For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

In view of the foregoing, 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.

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<sup>2</sup> A review of the petitioner's website at [REDACTED] does not find the requirement of any degree for a "Montessori Teacher" position. Rather, the requirements stipulate, in part, a "Montessori Teaching Diploma - with 3+ yrs. of experience at an established Montessori school." In contrast, the requirements for a "School Director" position on the petitioner's website stipulates the requirement of a bachelor's degree in addition to Montessori training.