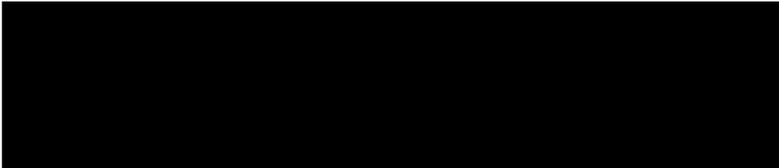


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FILE: SRC 06 102 50847 Office: TEXAS SERVICE CENTER Date:

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, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner recruits and employs teachers to fill vacancies in United States public and private school systems. The petitioner seeks to extend the employment of the beneficiary as a 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 Form I-129 and supporting documents; (2) the director's request for further evidence (RFE); (3) counsel for the petitioner's response to the director's RFE; (4) the director's denial decision; and (5) the Form I-290B and documents in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

On September 27, 2006, the director denied the petition determining that there is no employer/employee relationship between the petitioner and the beneficiary and, based on the record of proceeding, the director was unable to determine the grade level that the beneficiary is certified to teach. The director determined that the record did not establish that the proffered position qualified as a specialty occupation or that the beneficiary is qualified to perform the duties of a high school teacher.

On appeal, counsel for the petitioner submits a statement and supporting documents.

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.

When filing the Form I-129 petition, the petitioner averred that it employed 45+ persons, had a gross annual income of \$318,414, and recruited and employed teachers to provide educational services. The petitioner described the duties of the proffered position on an attachment to the Form I-129 as:

Teach Science to high school students using educational tools including use [of] films, computer resources such as educational software and the Internet, slides, overhead projectors and the latest technology in teaching, including computers, telecommunication systems and videodiscs;

Develop and maintain long range and daily instructional plans for students;

Use a variety of teaching methods/strategies such as group work, lecture, mini-lessons, exploration, questioning, discussion, and other cooperative teaching techniques;

Use appropriate techniques to encourage active participation in decision-making regarding such things as classroom rules, organization and topics of study, which communicate a caring attitude and trust of students and foster healthy self-esteem in students;

Develop healthy self-esteem in students and promote interactive learning habit[s] among students;

Design classroom presentations to meet student needs and abilities and work, if necessary, with students individually to assist students where a student needs help;

Evaluate a student's performance and potential and use a variety of assessment strategies and prepare, administer and grade tests;

Prepare report cards, meet with parents and school staff to discuss a student's academic progress or problems where necessary.

The petitioner also provided a Labor Condition Application (LCA) filed with the Department of Labor (DOL) listing the beneficiary's place of employment as Gree[n]ville, South Carolina.

In response to the director's RFE, counsel for the petitioner submitted an employment agreement between the petitioner and the beneficiary which stated that the petitioner would be the beneficiary's actual employer and that the beneficiary would teach science at the [REDACTED]

[REDACTED] On September 27, 2006, the director denied the petition. As noted above, the director observed that there did not appear to be an employer/employee relationship between the petitioner and the beneficiary and that, based on the record of proceeding, the director was unable to determine the grade level that the beneficiary is certified to teach.

On appeal, the counsel provided a copy of the petitioner's September 30, 2004 contract with the [REDACTED] County School District for the 2004-2005 school year as well as a copy of the petitioner's June 10, 2005 contract with the [REDACTED] District for the 2005-2006 school year. Along with the contracts, counsel submitted copies of Schedule "A" indicating the teacher's monthly rate of pay and the administration fees paid to the petitioner. Counsel also included a letter from the principal of [REDACTED] dated October 25, 2006 confirming the beneficiary's employment as a full time science teacher for grades 9 - 12.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;

- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

The petitioner in this matter is an employment contractor and a direct employer. The record contains sufficient evidence demonstrating that the petitioner locates individuals for placement in a variety of school systems for a fee and maintains a staff on its premises to administer its contracts with clients.

The description of duties included in the record is sufficient to enable the AAO to determine the proffered position is the specialty occupation of "teacher" for a public senior high school.

The record on appeal also contains a client contract with work orders relevant to the beneficiary entered into on June 10, 2005 and July 13, 2006 for the 2005-2006 and 2006-2007 school years beginning in August, for one year. The AAO finds that in this matter the work orders submitted on appeal and the contracts dated September 30, 2004 and June 10, 2005, with the automatic renewal clause, sufficient to substantiate the beneficiary's employment for the duration of her H-1B classification. In addition, the LCA submitted when the petition was filed lists the location of the beneficiary's proposed employment as [REDACTED] Carolina. The AAO finds the record sufficient in this matter to establish that the petitioner will employ the beneficiary in a specialty occupation in [REDACTED]

The AAO also finds that the beneficiary is qualified to perform the duties of a public high school teacher in South Carolina. The record contains a copy of the beneficiary's educator certificate issued by the [REDACTED] and the beneficiary's baccalaureate and master's degree certificates issued by the University of Mumbai and the University of Bombay.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained. The petition is approved.