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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: EAC 01 222 51269 Office: VERMONT SERVICE CENTER Date: FEB 5 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and affirmed his decision in a subsequent motion to reopen and reconsider. 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 school that seeks to employ the beneficiary as an elementary Spanish teacher. 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 beneficiary is not qualified to perform the duties of the proffered position. Counsel submitted a Form I-290B on March 27, 2002, but because it was untimely, the appeal was treated as a motion to reopen or reconsider. Although counsel indicated on the form that additional documentation would be submitted, no such documentation was received. On June 25, 2002 the director affirmed his prior decision on the motion. Counsel submitted a second Form I-290B on July 28, 2002. On the form, counsel indicated that additional evidence would be submitted within thirty days; as of this date, however, no other materials have been received. The record is thus complete. On appeal, counsel submits a brief statement and a letter with translation from the beneficiary's former employer at a school in Colombia.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

> (*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> (*3*) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
>
> (*4*) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) 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 decision on motion; (5) Form I-290B and supporting documentation, treated as a motion to reopen

or reconsider; (6) the director's decision on the motion; and (7) Form I-290B and supporting documentation. The AAO reviewed the record in its entirely before issuing its decision.

The petitioner is seeking the beneficiary's services as a Spanish teacher. The petitioner indicated that it wished to hire the beneficiary because she possessed a bachelor's degree in business administration as well as "distinguished experience, education, knowledge and skill." The petitioner requires a baccalaureate degree or its equivalent in any field; in fact, the petitioner stated in its response to the request for evidence, "A particular field of study is not of greatest concern."

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation of Spanish teacher. On appeal, counsel states that the beneficiary is qualified for the position because she taught young children in Colombia for a total of six months over a three-year period. Counsel submits a translated copy of a letter written by the beneficiary's former employer.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a field relating to education. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in a related field of study. She also appears to lack a teaching license. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an evaluation which, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*), equates the beneficiary's Colombian degree with a U.S. Bachelor of Science in Business Administration. Since this is not the field required by the position of Spanish teacher, CIS must examine the beneficiary's training and work experience and determine whether these amount to the equivalent of the required degree.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation[1];

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

On appeal, counsel submits a letter from Gimnasio Paraiso Infantil de las Americas in which the school's director states that the beneficiary worked there at least one month out of every six months from 1997 to 1999 as a teacher of math, language, and science. This is the only source of information on the record regarding the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The employment letter lacks detail and fails to even support counsel's claim that the beneficiary has six months of experience as a Spanish teacher. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). This evidence supports none of the requirements described at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) and does not establish equivalence to a baccalaureate degree in education, Spanish, or any other related field.

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[1] *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO notes that if, as the petitioner states, the proffered position does not require a degree or its equivalent in a specific specialty, then the position would not be a specialty occupation. As the decision was based on the beneficiary's qualifications, however, this issue will not be discussed further.

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.