U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship and Immigration Services

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FILE: EAC 02 254 51301 Office: VERMONT SERVICE CENTER Date: JUN 02 2004

IN RE: Petitioner: [redacted]
Beneficiar[redacted]

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 private Catholic school. It seeks to employ the beneficiary as a pre-kindergarten teacher, and endeavors to classify her 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 on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(l), 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:

> [A]n 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 are 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.

The record of proceedings before the AAO contains: (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 denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a pre-kindergarten teacher. Evidence of the beneficiary's duties includes the I-129 petition with attachment, and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: be responsible for students' development in the areas of religion, social and emotional skills, work habits, listening/speaking skills, fine motor skills, gross motor skills, reading readiness, and math readiness. The petitioner requires a minimum of a bachelor's degree for employment in the offered position. The petitioner further requires that all teachers obtain teacher certification from the State of New Jersey within three years of employment.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation.

Upon review of the record, the petitioner has established that the offered position meets the requirements of the above cited regulatory criteria. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook,* (*Handbook*), reports that the industry requires a degree; whether an industry 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. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for teachers, as described in the *Handbook.* The *Handbook* notes that all 50 States and the District of Columbia require public school teachers to be licensed. While teacher licensure is not required in private schools, the petitioner does require that its teachers obtain State certification within three years of employment. Licensure requirements vary by State, but all States require teachers to have at least a bachelor's degree for employment as a teacher. The petitioner employs 10 teachers, and states as a matter of policy that all of its teachers are required to have a bachelor's degree. In support of that assertion the petitioner submitted a copy of the Administrator's Manual from the Office of the Superintendent of Schools, Catholic Diocese of Paterson. There is no requirement, however, that the degree required be in any specific specialty for entry into the offered position. For example, the petitioner notes that it employs 10 full time teachers, and that the teachers have bachelor's degrees in elementary education, English, and/or arts. Those degrees are not closely related. Thus, a

baccalaureate degree in a specific specialty is not normally the minimum requirement for entry into the offered position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish any of the remaining regulatory criteria. The petitioner does not assert that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations and offers no evidence in that regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). As previously discussed, the petitioner does assert that it normally requires a degree or its equivalent for the offered position. The petitioner does not state, however, nor does the record reflect, that the petitioner requires a baccalaureate level education in a specific specialty for entry into the offered position. Accordingly, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) has not been established. Finally, the duties of the proffered position are routine for teacher positions in the industry. The petitioner does not contend that the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor does the petitioner assert that the position's duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) and (*4*). Indeed, the petitioner does not require a degree in a specific specialty for entry into the offered position.

The petitioner has failed to establish any of the regulatory criteria to qualify the offered position as a specialty occupation. Accordingly, the director's decision shall not be disturbed.

As always, 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 failed to sustain that burden.

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