U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: LIN 04 041 51542 Office: NEBRASKA SERVICE CENTER Date: JAN 0 8 2005

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:

PUBLIC COPY

[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

...leted to prevent clearly unwarranted invasion of personal privacy

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 school that seeks to employ the beneficiary as a 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(l) of 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.

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.

The record of proceeding 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a teacher. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 17, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: using interactive discussions and hands-on approaches to help students learn and apply concepts in various subjects; utilizing different teaching materials to help children understand abstract concepts, solve problems, and develop critical thought processes; encouraging collaboration in solving problems; working in groups to discuss and solve problems together; preparing students for their future education; working with students to develop skills to help them interact with others, adapt to new technology and think through problems logically; providing the tools and the environment for the students to develop the skills they will need in their future educational and post-educational lives; directing and guiding the development of the students to help shape their views of themselves and the world by using games, music, artwork, books, computers and other tools to teach basic and advanced skills; instructing children in a variety of subjects; assisting students to delve more deeply into particular subjects and expose them to more information about the world; applying the judicious use of films, slides, overhead projectors; computers, telecommunication systems, the Internet, videos and the latest technology in teaching students; evaluating, grading and performing other teaching-related administrative duties; continuing to update her skills so that she can instruct and use the latest technology in the classroom; instructing students to enhance their awareness and understanding of different cultures; designing classroom presentations to meet students' needs and abilities; working with students individually, as needed; planning, evaluating and assigning lessons; preparing, administering, and grading tests; listening to oral presentations; maintaining classroom discipline; observing and evaluating a student's performance and potential to judge the student's overall progress; tutoring students in areas in which they need help; discussing a student's academic progress or personal problems with the appropriate parties; conducting classroom activities; identifying students with special problems and referring them to the proper resources; and assisting in the selection of textbooks, curriculum design and teaching methods. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in any field of education, or the equivalent.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner established all four of the criteria found in the regulations, and submits additional evidence. Counsel asserts that the petitioner's own statements as well as documentary evidence supports its claim that a teacher in an independent school must have a bachelor's degree in education or in the subject taught, thereby establishing that the proffered position is a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; 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.

Factors often considered by CIS when determining these criteria include: 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* does not directly address private school teachers, except to state that they are not required to be licensed, unlike public school teachers. Therefore, the *Handbook* does not provide useful information in this instance. The laws of Ohio, however, provide some illumination on the matter. The law states that teachers in "nontax-supported schools" may receive:

> [C]ertification, without further educational requirements . . . [if he or she] has attended and received a bachelor's degree from a college or university accredited by a national or regional association in the United States except that, at the discretion of the state board of education, this requirement may be met by having an equivalent degree from a foreign college or university of comparable standing." Ohio Rev. Code Ann. § 3301.071.[1]

This indicates that a bachelor's degree is sufficient for certification, with no specific area of study required. As noted above, CIS interprets the term "degree" to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Counsel states that a letter supplied in response to the director's request for evidence and provided again on appeal establishes that a baccalaureate degree is normally the minimum requirement for entry into the proffered position. The letter is from the director of placement with The Education Group, a company that provides placement, consulting and search services to private and charter schools. She states that, based on her six years of experience in teacher placement, a bachelor's degree in education or in the subject matter being taught is normally the minimum requirement for entry in a position as a teacher. The author of the letter cannot be considered a recognized authority according to the regulations. A 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).

Regarding parallel positions in the petitioner's industry, the petitioner submitted 12 Internet job postings for teachers. There is no evidence, however, to show that the employers issuing those postings are similar to the

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[1] Accessed at http://onlinedocs.andersonpublishing.com on December 27, 2004.

petitioner, or that the advertised positions are parallel to the instant position. In addition, the AAO notes that only one of the 12 postings requires a degree in education; the rest require a degree in the subject matter to be taught. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The petitioner did submit letters from three headmasters of other independent schools in Ohio attesting that the standard requirement for teachers is a bachelor's degree in education or in the subject matter to be taught. The attention of CIS is drawn to the remarkable similarity of the letters submitted to show that a degree requirement is common to the industry. It is noted that the portions of the letters are essentially identical. The AAO also notes that what appears to be a "shell" or a model for these letters is included in the file. As the letters appear to have been drafted by the same individual, CIS must question whether they represent the true testimony of the avowed authors. CIS may, in its discretion, accept letters and advisory opinion statements as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm., 1988).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel provides a chart listing all of the teachers, the degree(s) earned and their area of study. Upon receiving the initial petition, the director issued a request for additional evidence, which included a request regarding the petitioner's normal hiring practices. The director stated, "[T]he employer's mere statement that a degree is required is not good enough; the employer must submit documentation to show that individuals with baccalaureate or higher degrees in a specialized area have been employed in the past." In response, the petitioner provided a copy of several pages from what appears to be a directory listing its teachers and the degrees they earned, with no indication of their areas of study. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits a portion of it on appeal. However, the Administrative Appeals Office will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Additionally, the AAO notes that the information provided still does not constitute documentation, such as copies of diplomas or transcripts. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Despite a lengthy listing of the duties of the proffered position, it is never stated what grade-level or subject would be taught. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, 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.