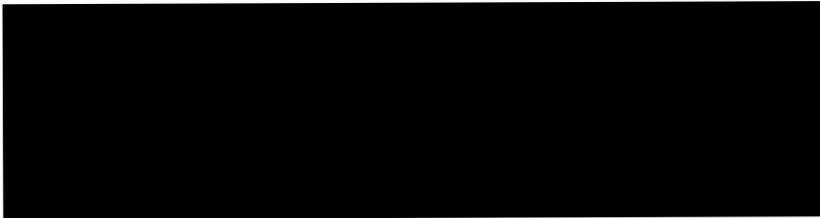




U.S. Citizenship
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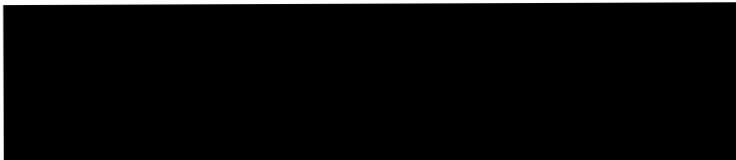
FILE: EAC 04 267 53220 Office: VERMONT SERVICE CENTER Date: JUN 02 2006

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.

for 
Robert P. Wiemann, Chief
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 child care center that seeks to employ the beneficiary as a senior team teacher and 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 position is not a specialty occupation. On appeal, counsel, submits a brief and additional documents.

Section 214(i)(1) of 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)(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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B and counsel's brief on appeal with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a private childcare facility that seeks the beneficiary's services as a senior team teacher in its infant room. Evidence of the beneficiary's duties includes: the Form I-129 with the petitioner's support letter and documents submitted on appeal. According to this evidence, the beneficiary would perform duties that entail: planning and implementing the children's social, emotional, physical, and intellectual competence; providing a variety of activities and opportunities to promote the physical development of children; providing activities and experiences that encourage questioning, probing, and problem-solving skills appropriate to the developmental level, temperament, and learning style of the children; helping children acquire and use language as a means of communicating their needs, thoughts, feelings, and their understanding to others; providing a variety of age appropriate experiences that stimulate children to explore and express their creative abilities; helping each child develop interactive and positive personality skills; establishing and maintaining a safe and healthy learning environment; arranging the classroom attractively; keeping the environment and materials in good condition; helping each child build a positive self-concept, learn to be self-disciplined, and develop his/her individual strengths; helping children learn to get along with others; encouraging feelings of mutual respect among the children of the group; providing the group with positive routines; setting limits; establishing simple rules that are understood and accepted by the children and adults; encouraging and developing positive participation of the parents in classroom and other activities; attending staff and parent meetings; sharing information regarding the child's health, developmental progress, behavior and interests with his/her parent(s); observing, recording and reporting significant individual and group behavior; working cooperatively with other staff members to develop plans and activities; participating in annual self-evaluations and on-going professional development; supervising other team members, student teachers, and volunteers assigned to work with the group; participating in the hiring process where appropriate; and following the policies and procedures of the childcare center. The petitioner stated that the position requires the beneficiary to have a bachelor's degree.

The director found that the proposed duties were not so complex as to require a four-year bachelor's degree in education or a related field. The director noted that the beneficiary had a master's degree in education and appeared to qualify for the position, but that the evidence did not establish that the proposed position qualified as a specialty occupation under any one of the criteria set forth in the Act.

On appeal, counsel asserts that the nature of the proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree or higher. Counsel asserts that the minimum educational requirement for teachers and educators is a bachelor's degree as stated in the *O*Net*, the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*, and the DOL's *Occupational Outlook Handbook (Handbook)*. Counsel asserts that the petitioner requires a bachelor's degree for the proposed position.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of each of the criteria, in conjunction with the record, the AAO concludes that the petitioner has failed to establish that its proposed preschool teacher position meets

any of the four criteria outlined in the regulations. Therefore, the proposed position is not a specialty occupation.

To determine whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation, as required by the Act.

The AAO routinely consults the *Handbook* in its consideration of whether or not a position is a specialty occupation and for the *Handbook's* information about the duties and educational requirements of particular occupations. Based on a thorough review of the petitioner's position description and the 2006-'07 edition of the *Handbook*, the AAO finds that the proposed position most resembles the position of a preschool teacher. According to the *Handbook*, preschool teachers capitalize on children's play to further language and vocabulary development, improve social skills, and introduce scientific and mathematical concepts.

The petitioner, however, failed to establish that the position is a specialty occupation under any of the criteria set forth in the regulations. The fact that the job entails supervisory duties does not elevate the job to one that requires a bachelor's degree in early childhood education or a related specialty.

Counsel asserts, in part, that the *DOT's Specific Vocational Preparation (SVP)* as not considered, even though submitted into the record. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. Counsel incorrectly suggests that the *O*Net's SVP Range* "7.0 to < 8.0" for preschool teachers establishes a requirement for a four-year degree. The *O*Net Online Help* section on the SVP component states that its SVP ratings have the same meaning as in the *DOT*. For this reason, the director did not err in discounting the *DOT* information.

The AAO first turns to the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. The AAO looks at the *Handbook's* discussion of the educational requirements for preschool teachers to determine whether or not the petitioner has established this criterion. A review in the *Handbook* of the educational requirements for preschool teachers reveals the following:

All 50 States and the District of Columbia require public school teachers to be licensed. Licensure is not required for teachers in private schools in most States. Usually licensure is granted by the State Board of Education or a licensure advisory committee. Teachers may be licensed to teach the early childhood grades (usually preschool through grade 3); the elementary grades (grades 1 through 6 or 8); the middle grades (grades 5 through 8); a secondary-education subject area (usually grades 7 through 12); or a special subject, such as reading or music (usually grades kindergarten through 12).

Requirements for regular licenses to teach kindergarten through grade 12 vary by State. However, all States require general education teachers to have a bachelor's degree and to have completed an approved teacher training program with a prescribed number of subject and education credits, as well as supervised practice teaching. Some States also require technology training and the attainment of a minimum grade point average. A number of States require that teachers obtain a master's degree in education within a specified period after they begin teaching.

Almost all States require applicants for a teacher's license to be tested for competency in basic skills, such as reading and writing, and in teaching. Almost all also require the teacher to exhibit proficiency in his or her subject. Many school systems are presently moving toward implementing performance-based systems for licensure, which usually require a teacher to demonstrate satisfactory teaching performance over an extended period in order to obtain a provisional license, in addition to passing an examination in their subject. Most States require continuing education for renewal of the teacher's license. Many States have reciprocity agreements that make it easier for teachers licensed in one State to become licensed in another.

The *Handbook* indicates that some teaching jobs do not require specific bachelor's degrees for entry into the field. The *Handbook* indicates that some employers require general education teachers to possess bachelor's degrees but not in any specific field of study. The *Handbook* also notes that many employers fill supervisory teaching positions by promoting experienced staff or related personnel. Counsel asserts that the petitioner has been accredited by the National Association for the Education of Young Children (NAEYC) and Maryland State Department of Education and that both these entities require teacher qualifications of a bachelor's degree for accreditation. Neither of these entities, however, requires a bachelor's degree in early childhood education, a related field, or any specific specialty. As those without specific bachelor's degrees can enter the professions and be promoted into corresponding supervisory positions, the petitioner fails to establish that a bachelor's or higher degree in a specific field of study is the normal minimum requirement for entry into the proposed position. Thus, the petitioner has failed to establish that the position is one that qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

If a job is not a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), the petitioner may still establish that the position qualifies as a specialty occupation under any one of the remaining criteria.

Next, the AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). As mentioned above, the two accrediting entities the petitioner is accredited by do not require a specific bachelor's degree in early childhood education. The AAO notes, that according to the Maryland State Department of Education brochure submitted by the petitioner, neither the beneficiary and nor any of the petitioner's other teachers are required to meet the licensure requirement for Maryland State public school

teachers. No other documentation was submitted to establish this criterion. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the employer normally requires at least a bachelor’s degree or its equivalent, in a specific field of study, for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner’s past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. Counsel asserts that the position qualifies as a specialty under this criterion because even if this is a new position, because the petitioner requires a bachelor’s degree for the position. As mentioned above, however, the petitioner requires a bachelor’s degree but not in any stated specific area of study. Thus, the petitioner fails to establish that the position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree in a specific field of study. Counsel asserts that the additional supervisory duties add a layer of complexity to the proposed position. The record, however, lacks evidence that substantiates that the combined duties, as described by the petitioner, are so complex or unique that they can only be performed by an individual with a specialized bachelor’s degree in early childhood education or a related field, or that they are so specialized and complex as to require knowledge usually associated with the attainment of a bachelor’s degree or higher in early childhood education. Counsel’s assertions are not supported by any document in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.