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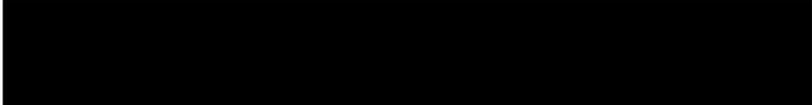
U.S. Citizenship
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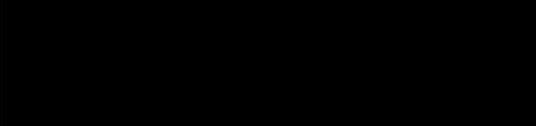


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FILE: SRC 06 136 53382 Office: TEXAS SERVICE CENTER Date: **SEP 18 2007**

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 filed March 27, 2006 and supporting documents; (2) the director's April 25, 2006 request for further evidence (RFE); (3) counsel for the petitioner's July 20, 2006 response to the director's RFE; (4) the director's August 12, 2006 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 August 12, 2006, the director denied the petition determining that the petitioner appeared to be an agent and that although the regulations allow for agents to petition on behalf of workers in certain circumstances, none of the circumstances appeared applicable. The director determined that the record did not establish that the proffered position qualified as a specialty occupation. The director also observed that the submitted contract did not cover the petitions requested dates of employment.

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 \$300,000,¹ 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 school students using educational tools including use 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 habits 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 Greenville, South Carolina.

In response to the director's RFE, counsel for the petitioner emphasized that the petitioner would be the beneficiary's actual employer and that the beneficiary would work at the Hughes Academy of Science and Technology in Greenville, South Carolina pursuant to the petitioner's contract with the Greenville County School District. The petitioner provided a copy of its September 30, 2004 contract with the Greenville County School District for the 2004-2005 school year. Although the September 30, 2004 agreement referenced an attached Schedule "A" indicating the teacher's monthly rate of pay and administration fees paid to the petitioner, the Schedule "A" was not included in the record. The record also includes a June 7, 2006 letter from the Hughes Academy of Science and Technology principal confirming the beneficiary's employment as a sixth grade science teacher.

On August 12, 2006, the director denied the petition. As noted above, the director observed that the petitioner appeared to be an agent, that the record did not establish the proffered position as a specialty occupation, and that the submitted contract did not cover the requested dates of employment.

¹ On appeal, counsel for the petitioner indicates the \$300,000 figure is incorrect and that the petitioner's actual gross annual income for 2004 is \$1,292,276.79. The petitioner submits its 2004 Internal Revenue Service Form 1120, U.S. Corporation Income Tax Return, to confirm the revised figure.

On appeal, counsel for the petitioner reiterates that the individual in the proffered teaching position will be under the full control of the petitioner. Counsel re-submits a copy of the September 30, 2004 agreement between the petitioner and the Greenville County School District, submits a copy of a July 7, 2005 contract between the petitioner and the Greenville County School District, and submits a copy of a July 6, 2006 contract between the petitioner and the Greenville County School District. The July 7, 2005 contract and the July 6, 2006 contract both contain a clause that the agreement will automatically renew for additional one-year terms unless either party provides written notice of its intent to not renew the contract. The petitioner also submits a Schedule "A" work order listing the beneficiary as a teacher for Hughes Academy, Greenville County School District, identifying the beneficiary's salary, and indicating the start date of the work order as August 2005 and continuing for the 2005-2006 school year. The record contains a second Schedule "A" work order listing the beneficiary as a teacher for Hughes Academy, Greenville County School District, identifying the beneficiary's salary, and indicating the start date of the work order as August 14, 2006 and continuing for one year. The petitioner also provides on appeal, an August 30, 2006 letter from the principal of Hughes Academy of Science and Technology describing the specific duties the beneficiary will perform as a science teacher for the school.

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 court in *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000) held that for the purpose of determining whether a proffered position is a specialty occupation, the petitioner acting as an employment contractor is merely a "token employer," while the entity for which the services are to be performed is the "more relevant employer." The *Defensor* court recognized that evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services.

When a petitioner is an employment contractor, the entity ultimately employing the alien or using the alien's services must submit a detailed job description of the duties that the alien will perform and the qualifications that are required to perform the job duties. From this evidence, CIS will determine whether the duties require

the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree, or its equivalent, in the specific specialty as the minimum for entry into the occupation as required by the Act.

On appeal, the petitioner has provided a description of duties from the beneficiary's ultimate employer, Hughes Academy of Science and Technology, Greenville County School District, sufficient to enable the AAO to determine the proffered position is the specialty occupation of "teacher" for a public elementary school.

The record on appeal also contains a client contract with work orders relevant to the beneficiary entered into beginning August 2005 for the 2005-2006 school year beginning August 14, 2006 for one year. The AAO finds in this matter the work orders submitted on appeal and the contracts dated July 7, 2005 and July 6, 2006 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 Greenville, South Carolina. The AAO finds the record sufficient in this matter to establish the proffered position as a specialty occupation.

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

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.