

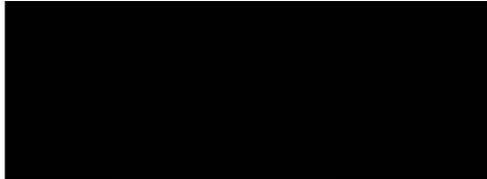
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B5

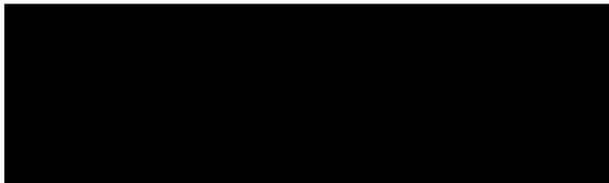


File: [REDACTED] Office: TEXAS SERVICE CENTER Date: FEB 05 2009
SRC 07 027 53369

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn, the appeal will be sustained, and the petition will be approved.

The petitioner is a private Catholic school. It seeks to employ the beneficiary permanently in the United States as an elementary school teacher pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not qualify for the classification sought.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we withdraw the director's adverse findings.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level. The equivalent of an advanced degree is either a U.S. baccalaureate or foreign equivalent degree followed by at least five years of "progressive experience" in the specialty. 8 C.F.R. § 204.5(k)(2).

As of the date of filing, the beneficiary held a baccalaureate degree in a field relevant to the position sought plus thirteen years of experience. The director concluded, however, that the experience was not progressive.

The initial employment letters confirmed the beneficiary's appointments as a teacher at Lyttelton Primary School in South Africa in January 1991, Waterkloof Elementary School in South Africa in January 1993 and four years of employment at the Wynbrooke Theme School as of November 2005. [REDACTED], Principal of Waterkloof Elementary School indicates that the beneficiary would sometimes serve as "a leader." [REDACTED] Principal of the Wynbrooke Theme School asserts that the beneficiary served on various committees and served as a mentor for new teachers.

In response to the director's notice of intent to deny, the petitioner submitted a detailed letter from [REDACTED] Deputy Principal at Waterkloof Elementary School. [REDACTED] confirms the beneficiary's employment there from January 1993 through June 2003. [REDACTED] indicates that the beneficiary was given additional responsibilities as her experience grew, including overseeing and coaching activities and annual events. Notably, in January 2001, the petitioner was "promoted and appointed as third grade tutor." This position involved overseeing all of the third grade teachers and meeting with the tutors for the other grades.

The director concluded that the responsibilities identified in the experience letters, including mentoring new teachers, "are all part of a teacher's regular duties." Thus, the director concluded that the beneficiary had not advanced in her career and, thus, did not have progressive experience.

On appeal, counsel asserts that if the director's analysis was correct, than "teachers could never qualify [under section 203(b)(2) of the Act] because their general duties do not change over time." Counsel also notes that the beneficiary's annual salary has increased considerably over time. Counsel submits information from the Department of Labor's Occupational Outlook Handbook, downloaded from <http://stats.bls.gov/oco/ocos069.htm>, which states that "highly qualified, experienced teachers can become senior or mentor teachers, with higher pay and additional responsibilities."

The fact that the beneficiary's experience was entirely as an elementary school teacher does not preclude a finding that her experience has been progressive. To hold otherwise would indeed lead to the result identified by counsel that no teacher could demonstrate progressive experience. We are satisfied that the beneficiary's responsibilities as a teacher mentor and team leader for her grade demonstrates that her experience has been progressive.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained and the petition is approved.