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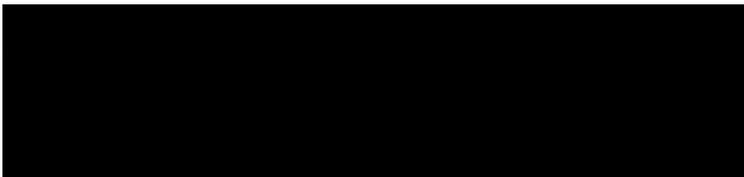
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 103 54613 Office: CALIFORNIA SERVICE CENTER Date:

JAN 06 2005

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:

SELF-REPRESENTED

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

DISCUSSION: The director of the service center 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 non-profit educational institute that seeks to employ the beneficiary as a bilingual vocational English instructor. The petitioner, therefore, 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, the petitioner submits a brief and previously submitted and additional evidence.

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 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 bilingual vocational English instructor. Evidence of the beneficiary's duties includes: the Form I-129; attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail ensuring that program participants are able to communicate effectively using vocational English in their workplace. The beneficiary will design and implement lessons that engage students at their specific level of understanding; assess whether students achieve program objectives; and revise and update the course instruction manual. The petitioner's document entitled "Vocational English Instructor," dated July 23, 2003, indicated that a candidate must possess a "college degree or its equivalent," and that the "instructors of the program must possess at least a [b]achelor's [d]egree."

The director determined that the proffered position was not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the petitioner never indicated the kind of educational classes requiring a bachelor's degree in a specific specialty. The director found the submitted list of teachers and their educational credentials insufficient to establish that a specific degree is required as a minimum entry into the proffered position. According to the director, the evidence did not show that an individual holding a certificate to teach English as a second language would not qualify to fill the position. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the beneficiary's duties correspond to those of ESL and GED teachers, occupations in which employers prefer, but do not require, a bachelor's degree as the normal, industry-wide minimum requirement for entry into the occupation. Finally, the director did not find that the petitioner established the proffered position qualified as a specialty occupation.

The director granted the petitioner's motion to reconsider, filed on August 4, 2003, and found that the additional evidence submitted on motion did not establish that the proffered position qualified as a specialty occupation.

On appeal, the petitioner states that the director misinterpreted the additional evidence submitted on motion. The petitioner contends that the state of California requires a bachelor's degree for the proffered position, and counsel submits previously submitted evidence to support this contention.

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 first considers 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)).

As previously mentioned, 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 evidentiary record shows that the petitioner does not state that a candidate is required to possess a bachelor's degree in a specific specialty for entry into the proffered position. The petitioner's document entitled "Vocational English Instructor," dated July 23, 2003, indicated that a candidate must possess a "college degree or its equivalent," and that the "instructors of the program must possess at least a [b]achelor's [d]egree." The petitioner requires a bachelor's degree; however, it does not require a bachelor's degree *in a specific specialty*. Consequently, it cannot establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the evidentiary record reveals that the petitioner simply requires a bachelor's degree without indicating a specific specialty. Accordingly, the petitioner cannot establish the second criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A).

Similarly, the petitioner cannot satisfy the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that it normally requires a degree or its equivalent in a specific specialty for the proffered position. Again, the petitioner requires a bachelor's degree, though not in a specific specialty.

Because the petitioner does not require a bachelor's degree in a specific specialty for the proffered position, it cannot establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that it show 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 baccalaureate or higher degree in a specific specialty.

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.