

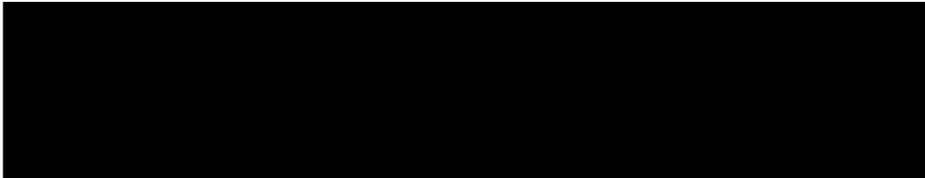
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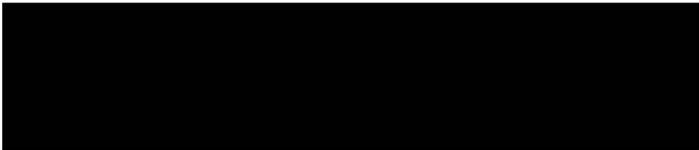
FILE: EAC 07 062 50455 Office: VERMONT SERVICE CENTER Date: JAN 15 2008

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The director's decision will be withdrawn and the petition approved.

The petitioner is a public school district that seeks to employ the beneficiary as an elementary school teacher. 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 on the basis of his determination that the petitioner had failed to demonstrate that the beneficiary qualifies to perform the duties of a specialty occupation. Specifically, the director found that the beneficiary lacked the licensure required by the State of Texas for this position. On appeal, counsel contends that the director erred in denying the petition.

The record of proceeding before the AAO contains: (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

According to counsel's December 14, 2006 letter of support, the duties of the proposed position would include preparing and developing course objectives and outlines for courses of study following State and district guidelines; maintaining accurate, complete, and current records; using lectures, demonstrations, presentations, and audio visual teaching aides to present subject matters to classes; preparing, administering, and correcting test results; assigning lessons; correcting papers; and hearing oral presentations. This is a position requiring state credentials.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary earned a bachelor's degree in family life and child development in the Philippines in 2003, and is a registered professional teacher in that country. According to an evaluation contained in the record, the beneficiary's educational credentials are equivalent to a bachelor's degree in child development and family studies from a regionally-accredited institution of higher education in the United States. The AAO has utilized data from the website of the American Association of Collegiate Registrars and Admissions

Officers' Electronic Database for Global Education¹ to conduct its own analysis of the beneficiary's qualifications, and concurs. The beneficiary, therefore, qualifies under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The director did not question whether the beneficiary qualifies under this criterion, however. Rather, he found her unqualified under 8 C.F.R. § 214.2(h)(4)(v).² The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource the AAO routinely consults for its information about the duties and educational requirements of particular occupations, confirms that licensure is required for teachers in public education in every State. Pursuant to 8 C.F.R. § 214.2(h)(4)(v), if the State requires licensure in order to work in the specialty occupation, the beneficiary must possess the license prior to approval of the H-1B petition:

- (A) General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.
- (B) Temporary licensure. If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.
- (C) Duties without licensure. In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.
- (D) H-1C nurses. For purposes of licensure, H-1C nurses must provide the evidence required in paragraph (h)(3)(iii) of this section.
- (E) Limitation on approval of petition. Where licensure is required in any occupation, including registered nursing, the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. An alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year unless he or she has obtained a permanent license in the state of intended employment or continues to hold a temporary license valid in the same state for the period of the requested extension.

¹ See <http://aacraoedge.aacrao.org> (accessed December 19, 2007).

² While the director did not cite this provision of the Code of Federal Regulations, this was clearly the section to which he was referring when he found the beneficiary to lack the requisite licensure.

Pursuant to 8 C.F.R. § 214.2(h)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation. Licensure does not preclude the granting of a petition if the only bar to licensure is the fact that a beneficiary cannot obtain a social security card because the beneficiary is not yet present in the United States.³

The record indicates that the State of Texas requires candidates for teaching positions in public primary or secondary schools to have a degree in any academic major and to complete specialized courses and teacher training in order to become certified. The record contains two documents from the Texas State Board for Educator Certification regarding the beneficiary's certification, both dated May 30, 2006. Upon meeting certain criteria, the beneficiary will be eligible for certification as a teacher in the following areas: (1) generalist (grades 4-8); and (2) generalist (grades ec-4). To obtain certification in these areas, she must take four tests: (1) pedagogy and professional responsibilities 4-8 or ec-12; (2) pedagogy and professional responsibilities ec-4 or ec-12; (3) generalist 4-8; and (4) generalist ec-4. Although these tests must be taken to obtain permanent certification, both documents specifically state that the beneficiary will be eligible for a one-year, nonrenewable (i.e., temporary) certificate when the Texas State Board for Educator Certification receives (1) a \$52 fee; (2) verification of immigration status; and (3) the beneficiary's social security number.

Pursuant to the policy memorandum cited at footnote 3, licensure (or in this case, certification) will not preclude the granting of a petition if the only bar to certification is the fact that a beneficiary cannot obtain a social security card because the beneficiary is not yet present in the United States. The regulation at 8 C.F.R. § 214.2(h)(v)(E), permits CIS to approve a petition for a period of one year or for the period that a temporary certification is valid. Here, the sole bar to the beneficiary obtaining a one-year, nonrenewable certificate is the fact that she is not physically present in the United States, as she must have a social security number and H-1B approval notice (and pay a fee) before she can obtain the certificate. Accordingly, the beneficiary satisfies 8 C.F.R. § 214.2(h)(v)(E), as clarified by the memorandum cited at footnote 3.

Accordingly, the petition will be approved for a period of one year. As the one-year certification will be nonrenewable, the beneficiary, pursuant to 8 C.F.R. § 214.2(h)(v)(E), may not be granted an extension of stay or accorded a new H classification after the one year unless she has obtained permanent Texas certification.

The petitioner has established that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the director's decision will be withdrawn and the petition approved for a period of one year.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved for a period of one year.

³ See Memorandum from Thomas E. Cook, Acting Assistant Commissioner, Office of Adjudications, *Social Security cards and the Adjudication of H-1B Petitions*, HQISD 70/6.2.8-P (November 20, 2001).