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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: SRC 05 130 52389 Office: TEXAS SERVICE CENTER Date:

OCT 26 2009

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a public school system in Thibodaux, Louisiana. It employs over 2,300 personnel. It seeks to employ the beneficiary as an elementary school French teacher. Accordingly, it 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).

On October 31, 2007, the director denied the petition determining that the record did not establish that the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel for the petitioner asserts that the director misconstrued the regulation and that the intended beneficiary has the academic credentials for the proffered position. Counsel submits a brief and additional documentation in support of the appeal.

The record contains: (1) the Form I-129 filed April 4, 2005 and supporting documentation; (2) the director's notice of intent to deny the petition (NOID); (3) counsel's response to the NOID; (4) the director's October 31, 2005 denial decision; and (5) the Form I-290B and counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before rendering this decision.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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.

In a January 1, 2005 letter appended to the petition, the petitioner indicated that it wished to hire the beneficiary in the capacity of an Elementary Teacher of French. The petitioner noted that the Lafourche Parish School Board requires a bachelor's degree (or foreign equivalent) in education or a related field, as well as proficiency in written and oral French. The petitioner further indicated that it required the individual to be able to acquire Louisiana teacher certification within the delays set forth under Louisiana law. The petitioner stated that the beneficiary met its requirements and that the beneficiary (1) had earned the Belgian equivalent of a Bachelor's degree in French and history; and (2) the Louisiana Department of Education had certified the beneficiary to teach French in Louisiana. The petitioner also noted that the beneficiary was completing her third year of teaching service with the Lafourche Parish School Board as a Foreign Associate Teacher of French authorized through the J-1 exchange visitor program G-5-0255, sponsored by the Council for the Development of French in Louisiana.

The petitioner also provided a certification from the State of Louisiana State Department of Education certifying that the beneficiary was eligible to teach middle school French and social studies and language arts immersion French. The certificate noted that the certificate was based on a "B.S., Foreign College or University, 1988" and was valid from December 3, 2004 to December 3, 2007. The petitioner also submitted an evaluation of the beneficiary's foreign credentials and experience. The evaluator determined that the beneficiary's diploma, obtained in Brussels, Belgium in 1988, represented the equivalent of three years of full-time academic work at a university in the United States. The evaluator also offered her opinion of the beneficiary's three years of professional experience in the United States working for the Lafourche Parish School Board as an elementary teacher of French with Louisiana certified teachers who must possess a minimum of a bachelor's degree in the specialty occupation. The evaluator determined that the three years of professional experience is more than the equivalent of one year of university study per USCIS' three-for-one rule. The record also included translated copies of the beneficiary's foreign diploma and transcripts.

In the April 17, 2007 NOID, the director requested that the petitioner provide evidence that the beneficiary's three years of professional experience was gained while working with peers, supervisors or subordinates who held a degree or its equivalent in the field and whether the beneficiary had achieved recognition of expertise in the specialty.

In response, counsel for the petitioner provided a letter signed by [REDACTED] of the Louisiana Department of Education, Division of Standards, Assessments, and Accountability dated May 14, 2007. [REDACTED] observed that the Louisiana Department of Education recognizes the

beneficiary's Belgium degree, *agregre de l'enseignement secondaire inferieur* as the equivalent of a bachelor of education degree awarded by an accredited college or university in the United States. [REDACTED] further noted that the beneficiary had been issued a Foreign Language Elementary Special Certificate, a certificate granted to applicants holding degrees and credentials from another country. [REDACTED] also confirmed that the beneficiary's work experience while participating in the J-1 program was performed with other teachers, all of whom had, at a minimum, a bachelor's degree (or foreign equivalent) and that the beneficiary's direct supervisor (the principal of the school to which she was assigned as well as her pedagogical supervisor) also possessed a bachelor's degree in education. [REDACTED] confirmed that the Louisiana Department of Education recognized the beneficiary as being qualified to teach in Louisiana due to her equivalent degree and holding professional licensure in her field in both Belgium and Louisiana. Counsel also provided the applicable Louisiana law regarding standard for state certification of school personnel.

The director, in his October 31, 2007 decision, determined that the petitioner had not established that the beneficiary was qualified for the proffered position. The director found that the certificate issued to the beneficiary was not an unrestricted certificate or license authorizing the beneficiary to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment. The AAO disagrees.

Based on the license presented in the record, the beneficiary was, in fact, authorized to teach middle school French and social studies and language arts immersion French, the exact occupation for which the petitioner requested the beneficiary's services. The certificate noted that it was based on a "B.S., Foreign College or University, 1988" and was valid from December 3, 2004 to December 3, 2007. The AAO finds that the license was in effect when the petition was filed and was eligible for renewal under the State of Louisiana's Standards for State Certification of School Personnel. Title 28, Part XIII §311. For this reason, the director's decision that the beneficiary was not qualified to engage in the proffered position will be withdrawn.

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.