

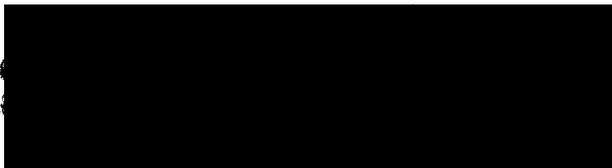
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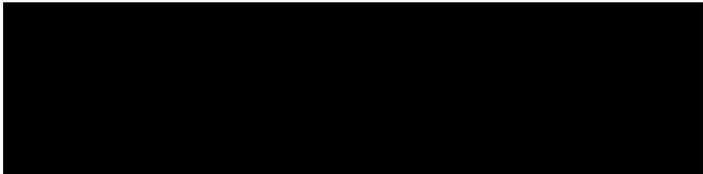


FILE: WAC 03 247 53563 Office: CALIFORNIA SERVICE CENTER Date: 001 04 2008

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 materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a Montessori School. It seeks to employ the beneficiary as a preschool teacher and to classify her 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 ground that the proffered position does not qualify as a specialty occupation.

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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner stated that its Montessori School was established in 2001, had three employees, and proposed to hire the beneficiary as a preschool teacher. The duties of the position were described as follows:

Instructs children in activities designed to promote social, physical, and intellectual growth needed for primary in preschool, day care center, or other child development facility. Plans and teaches individual and group activities to stimulate growth in language, social, and motor skills, such as learning to listen to instructions, playing with others, and using play equipment.

In response to the RFE the petitioner provided a more detailed listing of the duties:

- Planning and conducting daily activities in cooperation with head teacher and/or director.
- Supervising personnel assigned to assist with daily group activities.
- Preparing educational materials required [in] implementing the daily activity plan.
- Maintaining an orderly and clean physical environment conducive to optimum growth and development of the children.
- Attending staff and parent meetings and contributing to them.
- Sharing information appropriately with other center staff members.
- Relating to parents of children in the group to plan for activities, designed to foster the growth and development of each child.
- Observing, recording and reporting significant individual and group behavior.
- Attending training sessions.

To qualify for the position the petitioner indicated that an individual must have 12 post-secondary semester units in early childhood education or child development at an accredited college or university (of which six must have been earned prior to hiring and six may be acquired within three semesters after hiring) and at least six months of work experience in a licensed day care center or a comparable group child care program. The record indicates that the beneficiary completed some college coursework, presumably in her native Sri Lanka, that she received a Montessori Diploma in May 1992 upon completion of a two-year Montessori Training Course in Colombo, Sri Lanka, and that she has ten years of experience (1992-2002) at a Montessori School in Sri Lanka.

The director determined that the proffered position did not meet any of the criteria of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). Citing an internet website maintained by the Department of Labor, which indicates that preschool teachers in private schools are required to have either 12 semester units and six months of work experience in a daycare center or a Child Development Associate (CDA) certificate and six months of training or experience, the director determined that a baccalaureate or higher level of education is not the normal industry-wide minimum requirement for entry into the occupation. The director also concluded that the petitioner failed to establish that the requirement of a baccalaureate or higher degree is common to the industry in parallel positions among similar organizations, that the petitioner normally requires a degree for the proffered position, or that the duties of the position are so specialized and complex that baccalaureate level knowledge in the specialty is required to perform them.

On appeal counsel asserts that the proffered position qualifies as a specialty occupation because the petitioner normally requires its preschool teachers to have a degree or its equivalent. Counsel states that

the petitioner currently employs two other teachers with baccalaureate degrees, and points to previously submitted evidence of their employment and education. Counsel also submits a series of internet job advertisements for pre- and nursery school teachers requiring a bachelor's degree.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The *Handbook* states that the educational requirements for public preschool teachers are generally higher than those for private preschool teachers. As explained in the *Handbook*, 2004-05 edition, at 234:

Some States required a bachelor's degree in early childhood education, others require an associate's degree, and still others require certification by a nationally recognized authority. The Child Development Associate (CDA) credential, the most common type of certification, requires a mix of classroom training and experience working with children, along with an independent assessment of an individual's competence.

Thus, the *Handbook* indicates that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into a preschool teaching position at a private school. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel has submitted on appeal six internet job announcements for preschool or nursery school teachers. Four are from childcare and learning facilities which require a bachelor's degree in early childhood education or a related area. These entities – which include Los Angeles Speech & Language; the Northeast Community Center for MHMR in Philadelphia; and two KinderCare Learning Centers in Ellisville and St. Louis, Missouri – are different types of educational institutions from the petitioner, and the announcements provide no information about the size of the advertising facilities, relative to the petitioner. The other two job announcements are from a nursery school and another Montessori School, both of which require a bachelor's degree without indicating any particular specialty area. The petitioner previously submitted a series of internet job postings from Montessori Schools around the country, five of which were for preschool teaching positions. Of those five announcements, only two stated that a bachelor's degree (without indicating a specialty area) was required for the position, while the other three did not indicate that any baccalaureate degree (or the equivalent) was required. Thus, the internet job announcements in the record do not establish that there is any requirement of a bachelor's degree in a specific specialty that is common to the petitioner's industry in parallel positions among similar organizations, as required for the preschool teaching position at issue in this petition to qualify as a

specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the record does not show that the petitioner normally requires a degree or its equivalent in a specific specialty for the proffered position. Counsel refers on appeal to two current employees of the petitioner in preschool teaching positions who hold bachelor's degrees, citing the previously submitted transcripts of those individuals. What the transcripts show, however, is that the degrees earned by those individuals are in political science and psychology, respectively, and that little or none of their coursework involved early childhood education or any related field. Thus, the documentation of record does not show that the petitioner normally requires a baccalaureate or higher degree in a specific specialty directly related to the position of preschool teacher. Nor does the petitioner's recitation of the requirements for the proffered position, provided in its response to the RFE, indicate that a baccalaureate degree in a specific specialty, or its equivalent, is required.

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not demonstrate that the duties are so specialized and complex that they require a depth of knowledge usually associated with the attainment of a baccalaureate degree in a specific specialty.

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

**ORDER:** The appeal is dismissed. The petition is denied.