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**U.S. Citizenship  
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FILE: WAC 04 251 53259 Office: CALIFORNIA SERVICE CENTER Date: APR 11 2006

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 learning center that seeks to employ the beneficiary as a special education tutor. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a letter and additional evidence including: a letter from the petitioner's academic director; a letter from the beneficiary's former tutor and advisor; a letter from the "Headteacher" at the U.K. school where the beneficiary worked for two years; a letter from a qualified "Special Needs Coordinator (SENCO)" at the U.K. school where the beneficiary currently works; a "Certificate of Attendance"; and a new credentials evaluation for the beneficiary.

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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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, 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record of proceeding before the AAO contains, in part: (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 special education tutor. The petitioner's president indicated in his August 24, 2004 letter that a qualified candidate for the job would possess a bachelor's degree in education and specialized knowledge in social or behavioral science.

The director found that the beneficiary was not qualified for the proffered position, which is similar to that of a special education teacher, because the beneficiary does not hold a bachelor's degree in special education or a related field, and she does not hold an unrestricted State license, registration, or certificate authorizing her to practice the specialty occupation. On appeal, counsel states, in part, that the beneficiary is qualified for the position because she has acquired an equivalent of the required degree, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As supporting documentation, counsel submits: a letter from the petitioner's academic director; a letter from the beneficiary's former tutor and advisor; a letter from the "Headteacher" at the U.K. school where the beneficiary worked for two years; a letter from a qualified "Special Needs Coordinator (SENCO) at the U.K. school where the beneficiary currently works; a "Certificate of Attendance"; and a new credentials evaluation for the beneficiary.

In its *Occupational Outlook Handbook (Handbook)*, 2006-2007 edition, the Department of Labor (DOL) states the following regarding the training of persons seeking employment as special education teachers:

All 50 States and the District of Columbia require special education teachers to be licensed. . . .

For traditional licensing, all States require a bachelor's degree and the completion of an approved teacher preparation program with a prescribed number of subject and education credits and supervised practice teaching. However, many States require a master's degree in special education, involving at least 1 year of additional course work, including a specialization, beyond the bachelor's degree. . . .

The website of the California Commission on Teacher Credentialing at <http://www.ctc.ca.gov/credentials/leaflets/cl808.html>, which describes the credential requirements for special education teachers educated outside of California, states:

California has a two-tier credential structure. A five-year preliminary Level I credential is the first document issued after the individual meets basic credential requirements. The Level II is the professional clear credential which is issued once all credential requirements have been completed. The Education Specialist Instruction Credential authorizes the holder to teach in the area of specialization listed on the credential in the following settings:

- Special day classes;
- Special schools;
- Home/hospital settings;
- Correctional facilities;
- Nonpublic schools and agencies; and
- Resource rooms.

In this case, the beneficiary holds a bachelor's degree in sociology and a "Postgraduate Certificate in Education" conferred by a U.K. institution. The record also contains a document certifying that the beneficiary has attained qualified teacher status (QTS) and meets the qualifications to teach in "maintained and non-maintained special schools in England," and a Certificate of Attendance reflecting that the beneficiary attended the course, "Understanding Special Educational Needs (Primary)." The record additionally contains an evaluation from a company that specializes in evaluating academic credentials concluding that the beneficiary possesses the equivalent of a U.S. bachelor's degree in sociology with a second major in education. Counsel submits a second evaluation on appeal whose evaluator concludes that the beneficiary holds the U.S. equivalent of a bachelor's degree in special education. The record, however, contains no independent evidence, such as a letter from the university provost, that the evaluator of this second evaluation is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Moreover, as discussed above, a review of the *Handbook* finds that all 50 States and the District of Columbia require special education teachers to be licensed. The record, however, contains no evidence that the beneficiary holds the required State licensure. As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. 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.