

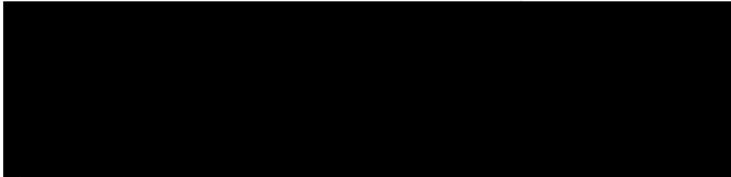
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

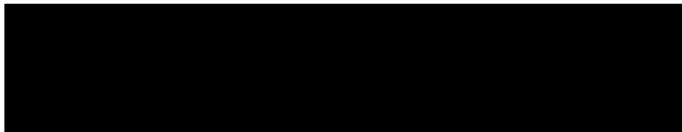
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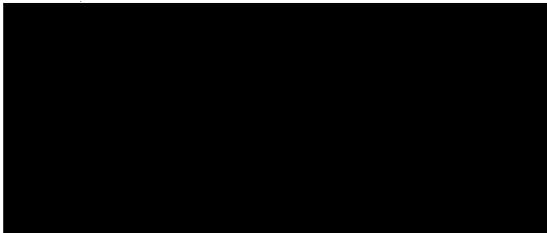
FILE: LIN 04 210 50874 Office: NEBRASKA SERVICE CENTER Date: NOV 22 2006

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, Chief
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 private day care center that seeks to employ the beneficiary as a preschool 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 finding that the proffered position is not a specialty occupation. Counsel submitted a timely appeal.

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 the brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a preschool teacher. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and its response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail teaching English, Chinese, math, the computer, and music to preschool children; writing curriculum and teaching plans for preschool children; creating and organizing group activities for different age groups; creating and organizing extra-curricular activities for students; taking charge of the preschool management; maintaining contact with students' parents; and engaging in school/community activities. For the proposed position the petitioner requires a bachelor's degree in education or a related field.

The director denied the petition. She found that the proffered position, an unlicensed preschool teacher at a private daycare facility, is not a specialty occupation. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that it reveals that the proposed duties reflect those of a preschool teacher, which do not require a baccalaureate degree in a specific academic discipline. The director found the submitted job postings unpersuasive in establishing the offered position as a specialty occupation. The director also found the list that describes the degree(s) held by each of the petitioner's employees unpersuasive in demonstrating that it normally requires a bachelor's degree in a specific academic field for the position. According to the director, the employee list was not supported by independent evidence of the degree(s) held by each employee and the degree(s) covered a broad spectrum of fields: chemistry, education, computer science, physics, drama, dance, music, journalism, and music and piano.

On appeal, counsel states that the petitioner is a licensed day care facility. Counsel states that according to Minnesota law a kindergarten teacher must have a bachelor's or higher degree. Counsel contends that the petitioner offers kindergarten programs and requires all of its teachers, even those not teaching kindergarten, to possess a bachelor's degree or higher. Counsel states that certain types of degrees such as early childhood education, provide knowledge to assess the needs of children from bilingual backgrounds. Counsel states that the duty to write curriculum and teaching plans for preschoolers requires a bachelor's degree in education or equivalent experience. Counsel contends that the petitioner requires all of its teachers to possess a bachelor's or master's degree, and if the degree is not in the field of education, equivalent teaching experience is required. Counsel maintains that the submitted job postings establish that the proposed position is a specialty occupation as the positions in the postings require a bachelor's degree.

Upon review of the record, the petitioner has not established that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 2006-2007 edition of 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner seeks to employ the beneficiary as a preschool teacher. The *Handbook* describes a preschool teacher as follows:

Preschool children learn mainly through play and interactive activities. *Preschool teachers* capitalize on children's play to further language and vocabulary development (using storytelling, rhyming games, and acting games), improve social skills (having the children work together to build a neighborhood in a sandbox), and introduce scientific and mathematical concepts (showing the children how to balance and count blocks when building a bridge or how to mix colors when painting). Thus, a less structured approach, including small-group lessons, one-on-one instruction, and learning through creative activities such as art, dance, and music, is adopted to teach preschool children. Play and hands-on teaching also are used by *kindergarten teachers*, but academics begin to take priority in kindergarten classrooms. Letter recognition, phonics, numbers, and awareness of nature and science, introduced at the preschool level, are taught primarily in kindergarten.

The *Handbook* states the following about the skills and responsibilities of teachers:

Teachers often work with students from varied ethnic, racial, and religious backgrounds. With growing minority populations in most parts of the country, it is important for teachers to work effectively with a diverse student population. Accordingly, some schools offer training to help teachers enhance their awareness and understanding of different cultures. Teachers may also include multicultural programming in their lesson plans, to address the needs of all students, regardless of their cultural background.

Teachers design classroom presentations to meet students' needs and abilities. They also work with students individually. Teachers plan, evaluate, and assign lessons; prepare, administer, and grade tests; listen to oral presentations; and maintain classroom discipline. They observe and evaluate a student's performance and potential and increasingly are asked to use new assessment methods. For example, teachers may examine a portfolio of a student's artwork or writing in order to judge the student's overall progress. They then can provide additional assistance in areas in which a student needs help. Teachers also grade papers,

prepare report cards, and meet with parents and school staff to discuss a student's academic progress or personal problems.

...

In recent years, site-based management, which allows teachers and parents to participate actively in management decisions regarding school operations, has gained popularity. In many schools, teachers are increasingly involved in making decisions regarding the budget, personnel, textbooks, curriculum design, and teaching methods.

With regard to the educational requirements for a preschool teacher, the *Handbook* reports:

All 50 States and the District of Columbia require public school teachers to be licensed. Licensure is not required for teachers in private schools in most States. Usually licensure is granted by the State Board of Education or a licensure advisory committee. Teachers may be licensed to teach the early childhood grades (usually preschool through grade 3); the elementary grades (grades 1 through 6 or 8); the middle grades (grades 5 through 8); a secondary-education subject area (usually grades 7 through 12); or a special subject, such as reading or music (usually grades kindergarten through 12).

Requirements for regular licenses to teach kindergarten through grade 12 vary by State. However, all States require general education teachers to have a bachelor's degree and to have completed an approved teacher training program with a prescribed number of subject and education credits, as well as supervised practice teaching. Some States also require technology training and the attainment of a minimum grade point average. A number of States require that teachers obtain a master's degree in education within a specified period after they begin teaching.

The *Handbook* does not indicate that a preschool teacher in private day care requires a bachelor's degree in a specific specialty.

Based on the evidence in the record and the *Handbook's* information, the AAO finds that the petitioner, a private day care, fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a specific degree requirement is common to the industry in parallel positions among similar organizations, counsel refers to job postings from ChildrenFirst and Compass School. The AAO finds that the ChildrenFirst posting is unclear as to whether the infant/toddler teacher requires a baccalaureate degree for its position as the posting indicates that an associate degree is acceptable for the position. Although the Compass School requires a bachelor's degree for its preschool program and floating teacher positions, it does not indicate that the degree must be in a

specific academic discipline. It is for these reasons that the submitted job postings fail to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must show that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific academic field. The beneficiary's duties, as shown by the evidence in the record, are the typical duties performed by a preschool teacher, which is an occupation that the *Handbook* reveals does not require a bachelor's degree in a specific academic specialty. Consequently, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner must show that it normally requires a degree or its equivalent for the position. The submitted list of the petitioner's employees indicates that each of the employees holds at least a bachelor's degree and that the degrees are in the fields of education, early childhood education, applied chemistry, computer science, physics, drama and movie production, dance and music, journalism, and music and piano. The submitted information about the petitioner indicates it teaches Chinese, English, math, music, art, dance, and language skills. In the context of the subjects to be taught, a baccalaureate degree in education, early childhood education, or the performing arts relates to the proposed position. The record, however, contains no independent evidence of the degrees held by the employees and the subject(s) taught by the employees. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish 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 academic discipline. The *Handbook* reports that a preschool teacher in a private day care center does not require a baccalaureate degree in a specific academic discipline. The evidence in the record reveals that the proposed duties are those typically performed by a preschool teacher in a private day care center. Accordingly, the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) as the nature of the proposed duties is not so specialized and complex as to require knowledge that 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 on this ground.

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.