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U.S. Citizenship
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FILE: WAC 04 257 50042 Office: CALIFORNIA SERVICE CENTER Date: **SEP 07 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.

106 *Michael F. Kelly*
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 dismissed. The petition will be denied.

The petitioner operates adult care facilities. It seeks to employ the beneficiary as a teacher of developmentally disabled adults. 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 establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proposed position.

In its September 17, 2004 letter of support, the petitioner stated that the duties of the proposed position would include developing and implementing lesson plans, habilitative training, instructional aids, and course work for each patient/client requiring such services.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In ruling that the proposed position was not a specialty occupation, the director found that the duties of the proposed position were essentially those of a social and human services assistant.

In determining whether a proposed 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 AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

While some of the duties of the proposed position may reflect those of social and human services assistants, the majority are those normally performed by adult basic education teachers, as those positions are discussed within the “Teachers—Adult Literacy and Remedial Education” entry in the 2006-2007 edition of the *Handbook*. According to the *Handbook*, programs run by private organizations develop standards based upon their needs and organizational goals, but generally require paid teachers to have at least a bachelor’s degree. The *Handbook* does not, however, indicate that the degree must be in any particular course of study.

When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor’s or higher degree in a specialized field of study. As noted previously, 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 proposed position.

The printout from the website of the California Employment Development Department (EDD), entitled “Labor Market Information,” that counsel submitted in response to the director’s request for additional evidence supports the AAO’s determination. In his response, counsel looked to page 9 of this printout for support of his contention that California licensure is not required for the position. The AAO notes that further

in its discussion, at page 10, the EDD specifically states in its “Training/Requirements” section that the requirements for the position are either a bachelor’s degree in a human services field or one year of teaching experience with adults.¹

Accordingly, the *Handbook* does not establish a baccalaureate degree in a specific field as a minimum qualification for entry into the occupation. Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. However, no such evidence has been presented. Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. It finds no evidence that would support such a finding, as the position proposed in the petition is very similar to the “Teachers—Adult Literacy and Remedial Education” positions described in the *Handbook*.

Accordingly, the petitioner has not established its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner’s ability to meet the third criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas.

However, no such evidence has been presented. On appeal, counsel states the following:

Through her September 17, 2004 letter, [the] petitioner makes it very clear that her organization requires that all of its teachers of the developmentally disabled have a bachelor’s degree. . . .

However, no evidence to support this assertion has been presented. Simply going on record without supporting documentary evidence is not sufficient for purposes 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)).

¹ The *Handbook* makes clear that not all adult teacher positions require a degree. Accordingly, an individual would not necessarily have had to possess a degree in order to obtain that single year of previous experience.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty occupation.

To the extent they are described in the record, the duties of the proposed position do not support a conclusion that they would require the beneficiary to possess at least a bachelor's degree level of knowledge in a specific specialty. There has been no demonstration that the duties of the proposed position are more specialized or complex than the "Teachers—Adult Literacy and Remedial Education" positions described in the *Handbook*, which, as noted previously, do not require a baccalaureate degree or its equivalent in a specific specialty. Therefore, the proposed position does not qualify as a specialty occupation under the fourth criterion.

Lastly, the AAO turns to the copies of advisory opinions submitted by counsel in response to the director's request for evidence. The first, dated June 26, 2003, is from [REDACTED] M.A. Sp.Ed., Program Director at [REDACTED] and the second, dated June 27, 2003, is from [REDACTED]. While [REDACTED] current position is not indicated, he has worked as an individual program coordinator at Agnews Developmental Center, a case manager at the San Andreas Regional Center, and as a licensing analyst at the California Department of Social Services, Community Care Licensing.

As a preliminary matter, the AAO notes that both of these opinions were written in June 2003, or 15 months before the petition was filed in September 2004.

The AAO finds that an inadequate factual foundation to support the opinions of the authors of these letters has been established. Neither author discusses the duties of the proposed position or mentions the petitioner by name. Neither author notes the location or size of the petitioner, nor indicates whether they reviewed company information about the petitioner, visited its site, reviewed the job duties of individuals working in positions similar to the position proposed here, or interviewed anyone affiliated with the petitioner. The extent of the authors' knowledge of the proposed position is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of the authors' pronouncements. These submissions therefore are not probative of any of the specialty occupation criteria. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Moreover, the AAO notes that neither author states that a degree in a specific specialty is required: [REDACTED] states that she does not know of any facilities that require a degree in education or special education, and [REDACTED] states that no specific college major is required. Again, 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 proposed position. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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.