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U.S. Citizenship
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FILE: EAC 04 260 54059 Office: VERMONT SERVICE CENTER

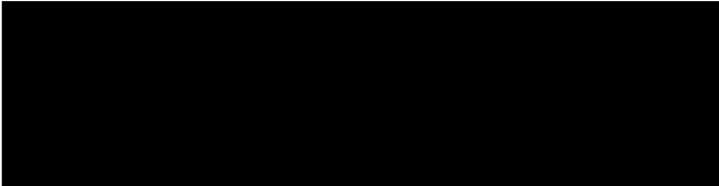
AUG 14 2007

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

James Blunzinger, for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The AAO's previous decision will be withdrawn. The petition will be approved.

The petitioner is a preschool education center that seeks to employ the beneficiary as a preschool teacher. The petitioner 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, 8 U.S.C. § 1101 (a)(15)(H)(i)(b). The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

In a decision dated May 1, 2006, the AAO affirmed the director's decision and dismissed the appeal. On June 2, 2006, counsel filed a Form I-290B and identified it as a "Motion to Reopen and Reconsider." On motion, counsel contends that the position of preschool teacher for the petitioner qualifies as a specialty occupation since the petitioner satisfies the requirements of the third and fourth prong for H-1B eligibility pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel submits new evidence to demonstrate that all of the current preschool teachers employed by the petitioner obtained a bachelor's degree or its equivalent. In addition, the petitioner submits an opinion letter to support the fact that the duties for the position of preschool teacher with the petitioner are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate.

On motion, counsel for the petitioner submits the following: (1) the petitioner's curriculum statement; (2) the petitioner's preschool outline of core subjects; (3) an opinion letter from [REDACTED] a consultant in the early childhood education field for over 15 years; (4) a copy of the bachelor's degree in education awarded to [REDACTED] a current preschool teacher employed by the petitioner; (5) a bachelor's degree in education awarded to [REDACTED] a current preschool teacher employed by the petitioner, and a credential evaluation showing that she was awarded the equivalent of a bachelor's degree in education from an accredited university in the United States; and, (6) pay stubs and Forms W-2 for these two preschool teachers employed by the petitioner.

In addition, counsel for the petitioner submitted additional evidence on July 3, 2006 to supplement the motion to reopen and reconsider that was previously submitted. The petitioner submits the following: (1) a credential evaluation of [REDACTED] a current preschool teacher, confirming she has the equivalent of a bachelor's degree in English; (2) copies of [REDACTED] diploma and transcripts, and her Form W-2 for 2005 and pay stubs; (3) a copy of the credential evaluation and diploma of [REDACTED], a current volunteer, confirming she has the equivalent of a bachelor's degree in Education; and (4) a copy of the bachelor's degree in Child Development awarded to [REDACTED] a former preschool teacher employed by the petitioner, and her Form W-2 for 2005.

The AAO finds that the materials submitted on motion overcome its earlier decision and will accordingly approve the motion, and the AAO's previous decision will be withdrawn.

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 one 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:

An 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.

The petitioner is identified as a preschool education center on the Form I-129. It seeks to employ the beneficiary as its preschool teacher. The petitioner has now submitted evidence regarding the educational background of its other preschool teachers, one volunteer, and one preschool teacher that was previously employed by the petitioner, all of whom have at least a baccalaureate degree in a field directly related to the position. One has the equivalent of a bachelor's degree in English, one has the equivalent of a bachelor's degree in education, one has a bachelor of arts degree in child development, one has a bachelor's degree in education, and one has the equivalent of a bachelor's degree in education

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)(3), which requires a demonstration that the petitioner normally requires a baccalaureate degree, or its equivalent, for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, of those employees with degrees who previously held the position. The AAO finds that the petitioner has submitted sufficient evidence to meet its burden of proof under this criterion, and will therefore withdraw the decisions of the director and the AAO otherwise.

The petitioner has overcome the grounds of the director's denial of the petition, and has demonstrated that the proposed position qualifies for classification as a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO notes that the beneficiary has the equivalent of a bachelor's degree in political science and education. She therefore qualifies to perform the duties of this specialty occupation.

The petitioner has established that the proposed position qualifies for classification as a specialty occupation and that the beneficiary qualifies to perform its duties. Accordingly, the decisions of the director and the AAO will be withdrawn and the petition approved.

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 motion is granted. The decisions of the director and the AAO are withdrawn. The petition is approved.