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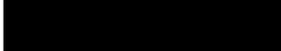
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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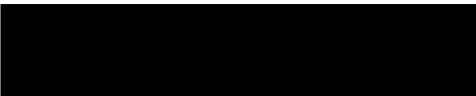


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Office: VERMONT SERVICE CENTER

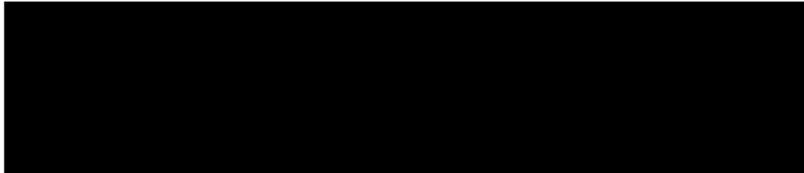
Date: JUN 01 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, 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 private Montessori school. To employ the beneficiary as a teacher, the petitioner endeavors 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, finding that the petitioner failed to establish that the petitioner would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which (1) 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 (2) 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry

into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

Various submissions in the record, both from the petitioner and from Montessori organizations, state that to enter Montessori training one must generally possess a bachelor's degree. Documentation from the Montessori Institute of North Texas states, "Persons accepted into the program will have a college degree in any field or its equivalent in life and work experience." A document from the Montessori Institute Northwest states, "The educational standard for the course is a bachelor's degree in any field. Exceptions are considered on an individual basis." Those documents clearly indicate that acceptance into the Montessori training program does not require a minimum of a bachelor's degree in a specific specialty or the equivalent.

Another document from Montessori Institute Northwest is even more explicit. It states,

Students come to the course with degrees in such varied fields as Child & Family Studies, Ethnic Studies, Psychology, Art, Philosophy, Anthropology, Political Science, Women's Studies, Landscape Architecture, Geography, Dance, Music Asian Studies, Biology, Mathematics, Nursing, Theater, English Literature, and – yes, occasionally – Education.

In a letter dated May 12, 2008, the petitioner's executive director stated,

To effectively perform the duties of Teacher, the ideal candidate must possess at a minimum of a Bachelor's degree [sic] in Montessori Education or a related field. This requirement is normal to our business and to our industry.

The AAO notes that the salient inquiry is not what education the ideal candidate would possess, but what education an acceptable candidate must normally possess for entry into the occupation.

In a letter dated December 1, 2008, however, the petitioner's executive director stated,

The position offered normally requires, at a minimum, a bachelor's degree, or the foreign degree equivalent, in Education, or other closely[-]related field and a certification in the Montessori Method. A bachelor's degree is typically required to carry out the specialized job duties. This is a standard and normal requirement for this type of professional position in our schools and in the education industry. We have not hired/do not hire any individuals for the position Teacher with less than these stated requirements. The position of Montessori School Teacher is clearly professional in nature, requiring specialized and complex knowledge, which can only be obtained by having a bachelor's degree and further Montessori certification.

[Emphasis in the original.]

In that letter the executive director also stated that, in the proffered position, the beneficiary would teach students aged six through nine. The AAO will, of course, examine the evidence to determine whether it supports the statement that the petitioner has not and does not hire teachers with less than a bachelor's degree or the equivalent in education.

The record contains the petitioner's employee list and organizational chart, as well as diplomas of some of its employees. The employee list indicates that the petitioner has 19 employees. The organizational chart shows that four of those employees are in positions designated Elementary Teacher and one is in a position designated Art Teacher. Those five employees are the beneficiary, [REDACTED]

The record contains another list of the petitioner's teachers, however, that shows that the petitioner employs ten teachers. In addition to those shown above, that list indicates that the petitioner employs [REDACTED]

The record contains diplomas for [REDACTED], and a certificate awarded to [REDACTED]

[REDACTED] diploma shows that she was awarded a master's degree in education. [REDACTED] diploma shows that he has a bachelor of science degree, but does not reveal the subject in which he majored. [REDACTED] diplomas show that she was awarded both a bachelor's degree and a master's degree in education. [REDACTED] diploma shows that she was awarded a bachelor of science degree, but does not specify the subject in which she majored.

The record contains a Certificate in Fine Arts awarded to [REDACTED]. The record does not demonstrate that the certificate is equivalent to a bachelor's degree. Whether [REDACTED] is the same person as [REDACTED] unknown to the AAO.

The record contains a diploma awarded to [REDACTED] showing that she was awarded a bachelor's degree, but not specifying the subject in which she majored. Whether [REDACTED] Mitchell is the same person as [REDACTED] is unknown to the AAO.

The record contains a diploma awarded to [REDACTED] showing that she was awarded a bachelor's of science degree, but not specifying the subject in which she majored. Whether [REDACTED] is the same person as [REDACTED] is unknown to the AAO.

The record also contains diplomas issued to other people whom the petitioner does not claim to employ as teachers. The AAO notes that those other diplomas have no relevance to whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or the equivalent.

The record does not contain diplomas awarded to [REDACTED]. The reason for that omission is unknown to the AAO.

On appeal, counsel provided a job description of the proffered position. That job description states that the position requires a bachelor's degree, but does not state that the degree must be in any specific specialty.

Counsel provided a printout of content from a website maintained by the Loyola College in Maryland. That website indicates that in order to be eligible for admission to the college's graduate programs, including the graduate program in Montessori education, a candidate must possess a bachelor's degree from an accredited institution of higher learning in the United States or proof of equivalent education at a foreign university. It does not state that the degree must be in any specific specialty.

Counsel also provided a printout of content from a website maintained by the Montessori Institute of Milwaukee, Inc. That website states that to apply to that institute's Montessori teacher training program, one must have a bachelor's degree, with exceptions made at the discretion of the training center. It does not state that the requisite degree must be in any specific specialty.

On appeal, counsel noted that enrollment in a Montessori teacher training center requires a bachelor's degree. Counsel also noted the petitioner's executive director's assertion that the proffered position requires a minimum of a bachelor's degree or the equivalent in education or a closely-related field.

The AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook*¹ (the *Handbook*) as an authoritative source on the duties and educational requirements of a wide variety of occupations. The handbook describes the duties of private elementary school teaching positions as follows:

Private schools are generally exempt from meeting State licensing standards. [Private schools] prefer candidates who have a bachelor's degree in . . . in childhood education for elementary school teachers.

That private schools prefer candidates with bachelor's degrees in elementary education for elementary school teaching position does not demonstrate that the positions require a minimum of a bachelor's degree in a specific specialty or the equivalent. The evidence in the record does not demonstrate that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The record contains very little evidence pertinent to the minimum qualifications for elementary school teaching positions at private schools other than the petitioner. The petitioner has not, therefore, demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online, accessed May 18, 2010.

Evidence pertinent to some of the petitioner's teachers educational levels was not provided. Evidence pertinent to others does not demonstrate that they possess a minimum of a bachelor's degree or the equivalent in education. The evidence in the record does not support the assertion of the petitioner's executive director that the petitioner has never hired a teacher with less than a bachelor's degree, and certainly does not support that the petitioner requires a bachelor's degree or its equivalent in education as a minimum qualification for the proffered position. The petitioner has not, therefore demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The evidence of record does not demonstrate that the duties of the proffered position are more complex than those private school teaching positions that do not require a minimum of a bachelor's degree in a specific specialty or the equivalent. The petitioner has not demonstrated, therefore, that the proffered position or its duties are so complex, unique, or specialized that they can only be performed by a person with a minimum of a bachelor's degree in a specific specialty or the equivalent or that performance of the duties is usually associated with a minimum of a bachelor's degree in a specific specialty or the equivalent. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) or the criteria of the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO finds that the director was correct in his determination that the record before him failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the director's decision to deny the petition shall not be disturbed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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