

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



ER

D2

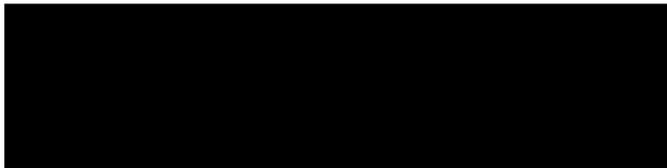
FILE: EAC 09 188 51345 Office: VERMONT SERVICE CENTER Date: APR 01 2011

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 \$630. 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 director of the Vermont 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 child care services provider with 17 employees. It seeks to employ the beneficiary as a part-time daycare teacher 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 concluding that the petitioner failed to establish that the proffered position qualifies as an H-1B specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's Request for Additional Evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The primary issue for consideration by the AAO is whether the petitioner failed to establish that the proffered position is a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of 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 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 particular positions 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To make its determination whether the employment as described by the petitioner qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific

specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner is a child care services provider that seeks the beneficiary's services as a part-time daycare teacher. In the support letter submitted with the petition, the petitioner describes the position duties as follows:

[The beneficiary] is being offered a [sic] temporary employment as a Daycare Teacher, a specialty occupation with [the petitioner]. In this capacity, she will teach elemental natural and social science, personal hygiene, music, art, and literature to children from 4 to 6 years old; and promote physical, mental, and social development.

The petitioner stated that the proffered duties require an individual who has attained at least a bachelor's degree or the equivalent in early childhood education or a related field.

Additionally, the petitioner submitted copies of the beneficiary's foreign transcripts and diploma together with a credential evaluation finding that the beneficiary's two years of university-level study in early childhood education together with 28 years of professional experience in early childhood education are equivalent to a Bachelor of Science degree in Early Childhood Education from an accredited educational institute in the United States. The credential evaluation was written by Beth Cotter, President and James L. Clegg, Director at Foreign Credential Evaluations, Inc. (FCE).

On July 7, 2009, the director issued an RFE requesting more detailed information about the duties for the proffered position, including the percentage of time the beneficiary would spend in each duty. The director also requested other documentation demonstrating the proffered position is a specialty occupation as well as whether the beneficiary is required to hold a license in South Carolina.

In response to the RFE, counsel stated that the beneficiary will teach elemental natural and social science as well as personal hygiene, music, art, and literature to children ages 4 to 6 years old for 50% of the time and promote physical, mental, and social development for 50% of the time.

A letter from the petitioner states as follows:

According to the South Carolina Department of Social Services, daycare teachers must meet the minimum qualifications listed below:

Child care center staff members must be 18 years old and literate. They must have a high school diploma or GED and at least 6 months experience as child center personnel/caregivers in a licensed/approved facility. They must also complete 6 hours of training in child growth and development/early childhood education within 6 months of hiring.

[The petitioner] employs 17 full-time teachers, 6 part-time teachers. All of my full time teachers have either a 4-year college or two-year-college degree. Their majors were in either general education with a minor in early childhood or early childhood education (ECE). The break down in education is as follows:

17 full-time: 11 with 4-year B Ed. Degrees; 6 with AA degrees – ECE
6 part-time: All with AA degrees in ECE

The petitioner also submitted a monthly schedule indicating that the beneficiary will work for the petitioner from 7:00 AM to 11:00 AM. Although the petitioner and counsel state that the beneficiary will teach children ages 4 – 6, the schedule indicates that the age group the beneficiary will work with is from ages 3 – 4. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). According to the schedule, from 7 – 8 AM, the children have a choice of activities. From 8 – 9 AM the children have a break and eat breakfast. Then, from 9 – 9:30 AM, the children will learn ABCs, numbers, and cultures depending on the day. After that, from 9:30 – 11 AM, the children will play. It therefore appears from the schedule that the majority of the beneficiary's time will be spent on caregiving, rather than teaching, for pre-school aged children who are not in a structured learning environment.

Additionally, the petitioner submitted three postings from other employers. The first posting, which requires a bachelor's degree in early childhood education or a related field, is for a full-time early childhood education teacher who will supervise and develop teachers at a religious school. The second posting is for directors as well as teachers and requires only an early childhood credential with college level coursework in early childhood education being only preferred. The third posting is for a Head Start teacher which requires only an Associate's degree in early education or a related field plus six months of experience.

In addition to the postings, the petitioner also submitted copies of two advertisements from other

employers. The first ad is for teachers who teach children in kindergarten or higher grade levels for an international academy with students K-12. The second ad is for a kindergarten teacher at a school for Native Americans.

Counsel also submitted the section regarding Kindergarten Teachers, except Special Education, from the Occupational Information Network *O*Net On-line* Summary Report (*O*Net On-line*).

The director denied the petition on July 30, 2009.

On appeal, counsel again argues that the proffered position is that of a kindergarten teacher and that the *O*NET Online* report for kindergarten teachers demonstrates that the proffered position is a specialty occupation. First, the AAO disagrees with counsel's characterization of the proffered position as a kindergarten teacher. The schedule submitted by the petitioner in response to the RFE indicates that the beneficiary will primarily care for children ages 3-4, which are not typically the ages of kindergarteners. Even if the beneficiary will also care for children who are older than 4, the fact that she will also care for children ages 3-4 during unstructured playtime means that her duties are not primarily those of a kindergarten teacher. However, even if the petitioner could demonstrate, which it did not do, that the beneficiary will primarily work as a kindergarten teacher, on March 31, 2011, the AAO accessed the pertinent section of the *O*Net Online* Internet site, which addresses Kindergarten Teachers, Except Special Education, under the Department of Labor's Standard Occupational Classification code of 25-2012.00. That site is <http://online.onetcenter.org/link/summary/25-2012.00>. Contrary to counsel's assertion, *O*Net Online* does not state a requirement for a bachelor's degree for Kindergarten Teachers, Except Special Education. Rather, it assigns Kindergarten Teachers, Except Special Education, a Job Zone Four rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the *O*Net Online* does not state or otherwise indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *O*Net Online* information is not probative of the proffered position being a specialty occupation.

Counsel also argues on appeal that the state of South Carolina requires that "a daycare center/kindergarten teacher must possess a bachelor's degree or its equivalent." This argument is not supported by the documentation counsel submits on appeal. The information counsel submitted from the Department of Social Services in South Carolina regarding daycare licensure states that "[a] bachelor's degree or advanced degree from a state-approved college or university in early education, child development, child psychology or a related field that includes at least eighteen credit hours in child development and/or early childhood education" is only one requirement that is acceptable for either a Center Director or Co-Director of a licensed Child Care Center. First, the beneficiary is not being hired as either the Center Director or Co-Director for the petitioner's daycare center. Second, as an alternative to the bachelor's degree in early education, child development, child psychology or a related field, it is also acceptable for the Center Director or Co-Director of a licensed Child Care Center in South Carolina to have a bachelor's degree in any subject, an associate's degree in early childhood education, child development, child psychology or a related field, a diploma in child development/early childhood education from a state-approved institution or a child development associate credential plus one year of work experience, or even a high school diploma or GED with 3 years of experience in a licensed, approved or registered child

care facility. Third, counsel's statement contradicts the petitioner's letter provided in response to the RFE, which states that South Carolina requires that child care center staff members be 18 years old and literate with a high school diploma or GED and six months of experience as child center caregivers in a licensed facility plus six hours of training. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The documentation submitted on appeal for Palmetto Stars, which is a rating system for child care and early education providers, indicates that this rating system is voluntary, meaning that the petitioner is not required to be rated under it. Additionally, counsel did not submit documentation either that the petitioner has been rated under Palmetto Stars or, even if the petitioner has been rated under Palmetto Stars, that this rating system requires that people performing the proffered position duties for the petitioner hold at least a bachelor's degree or the equivalent in a specific specialty.

Based on the Form I-129, which includes the petitioner's description of its business as a provider of child care services and an NAICS Code for child day care services, the petitioner appears to be primarily a day care center that offers prekindergarten educational programs, rather than a school. This assessment is corroborated by the petitioner's statement in the response to the RFE that the petitioner is "a licensed, private center-based daycare facility in Charleston, SC." The AAO therefore finds that the proffered position is not that of a kindergarten teacher as claimed by counsel. Moreover, given that the petitioner's schedule indicates that the beneficiary will primarily provide caregiving services for (rather than teach) children ages 3-4 between 7 AM and 11 AM, the AAO does not find that the beneficiary will work as a preschool teacher.

Instead, the AAO finds that the proffered position fits in the *Handbook's* section on Child Care Workers, described as follows:

Child care workers nurture, teach, and care for children who have not yet entered kindergarten. They also supervise older children before and after school. These workers play an important role in children's development by caring for them when their parents are at work or are away for other reasons or when the parents place their children in care to help them socialize with children their age. In addition to attending to children's health, safety, and nutrition, child care workers organize activities and implement curricula that stimulate children's physical, emotional, intellectual, and social growth. They help children explore individual interests, develop talents and independence, build self-esteem, learn how to get along with others, and prepare for more formal schooling.

Child care workers generally are classified into three different groups based on where they work: private household workers, who care for children at the children's homes; family child care providers, who care for children in the providers' homes; and *child care workers who work at child care centers, which include Head Start, Early Head Start, full-day and part-day preschool, and other early childhood programs. . . .*

* * *

Most child care workers perform a combination of basic care and teaching duties, but the majority of their time is spent on caregiving activities. However, there is an increasing focus on preparing children aged 3 to 5 years for school. Workers whose primary responsibility is teaching are classified as preschool teachers. (Preschool teachers are covered elsewhere in the Handbook.) However, many basic care activities also are opportunities for children to learn. For example, a worker who shows a child how to tie a shoelace teaches the child while providing for that child's basic needs.

Child care workers spend most of their day working with children. However, they do maintain contact with parents or guardians through informal meetings or scheduled conferences to discuss each child's progress and needs. Many child care workers keep records of each child's progress and suggest ways in which parents can stimulate their child's learning and development at home. Some child care centers and before- and afterschool programs actively recruit parent volunteers to work with the children and participate in administrative decisions and program planning.

Young children learn mainly through playing, solving problems, questioning, and experimenting. *Child care workers recognize that fact and capitalize on children's play and other experiences to further their language development (through storytelling and acting games), improve their social skills (by having them work together to build a neighborhood in a sandbox), and introduce scientific and mathematical concepts (by balancing and counting blocks when building a bridge or mixing colors when painting). Often, a less structured approach, including small-group lessons; one-on-one instruction; and creative activities such as art, dance, and music, is used to teach young children. Child care workers play a vital role in preparing children to build the skills they will need in school.*

Child care workers in child care centers, schools, or family child care homes greet young children as they arrive, help them with their jackets, and select an activity of interest. When caring for infants, they feed and change them. To ensure a well-balanced program, child care workers prepare daily and long-term schedules of activities. Each day's activities balance individual and group play, as well as quiet time and time for physical activity. Children are given some freedom to participate in activities they are interested in. *As children age, child care workers may provide more guided learning opportunities, particularly in the areas of math and reading.*

(emphasis added). According to the *Handbook*, the difference between a child care worker who supervises preschool aged children and a preschool teacher is that the child care workers primarily spend their time on caregiving activities while the teachers primarily spend their time teaching. As discussed previously, according to the petitioner's schedule, the beneficiary will, at best, only be spending approximately 30 minutes of her four hour day teaching. The petitioner did not submit any evidence that the beneficiary will plan or design a curriculum, as would normally be expected of a preschool teacher. The remaining three and a half hours of the beneficiary's time will be spent on caregiving activities in an unstructured environment, such as supervising the children during their free time and breakfast as well as during outdoor play. This is not to say that the children will not be learning during the time that they are playing.

However, the petitioner has failed to provide evidence that the beneficiary will spend the majority of her time teaching, rather than caregiving for, these children.

The *Handbook* describes the requirements for child care workers as follows:

The training and qualifications required of child care workers vary widely. Each State has its own licensing requirements that regulate caregiver training. *These requirements range from less than a high school diploma, to a national Child Development Associate (CDA) credential, to community college courses or a college degree in child development or early childhood education. State requirements are generally higher for workers at child care centers than for family child care providers.*

(emphasis added). Therefore, according to the *Handbook*, working as a child care worker does not normally require at least a bachelor's degree or the equivalent in a specific specialty and is therefore not a specialty occupation.¹

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for

¹ The AAO notes that even if the petitioner could establish, which it did not do, that the beneficiary will work primarily as a preschool teacher, rather than a caregiver, according to the *Handbook's*, 2010-11 online edition, section on Teachers – Preschool, except Special Education, "[s]ome employers may prefer workers who have taken secondary or postsecondary courses in child development and early childhood education or who have work experience in a child care setting. Other employers require their own specialized training. An increasing number of employers require at least an associate degree in early childhood education." Therefore, the *Handbook* indicates that working as a preschool teacher does not normally require at least a bachelor's degree or the equivalent in a specific specialty and therefore does not qualify as a specialty occupation.

which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Although the petitioner submitted advertisements and postings from other employers, as discussed above, the petitioner does not provide any job-vacancy advertisements evidencing a common degree-in-a-specific-specialty requirement in positions that are both: (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner. The two ads submitted are for a teacher who does not teach pre-school children. For the postings, one posting is for a teacher who has supervisory responsibilities, one posting states that an associate's degree is acceptable, while the third posting states that an early childhood education credential is sufficient. On appeal, counsel has submitted two additional ads, however as these ads are for a part-time Mandarin Chinese Language Instructor and a kindergarten teacher, respectively, neither of these positions are parallel to the proffered position, which is closest to that of a child care worker.

The petitioner has also not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree in a specific specialty is not a requirement for child care worker positions. Moreover, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than child care worker positions that can be performed by persons without a specialty degree or its equivalent, particularly in parallel positions in organizations similar to the petitioner.

Next, as the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). As mentioned previously, the petitioner employs some people who do not have a bachelor's degree in addition to others who have bachelor's degrees. Most importantly, none of the petitioner's 6 part-time workers, which, without evidence to the contrary, are presumably similar positions to that offered to the beneficiary, have at least a bachelor's degree or the equivalent in any field, let alone one in a specific specialty.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record does not demonstrate that the proffered duties are more specialized and complex than child care worker positions that are not usually associated with a bachelor's degree in a specific specialty, such as the petitioner's own already employed part-time workers.

Therefore, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Accordingly, the AAO shall not disturb the director's denial of the petition.

The AAO does not need to examine the issue of the beneficiary's qualifications because the petitioner has not provided sufficient documentation to demonstrate that the position is a

specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in order for the beneficiary to qualify for a specialty occupation requiring at least a bachelor's degree in early childhood education, the record must demonstrate that she has education, specialized training, and/or progressively responsible experience equivalent to a U.S. baccalaureate or higher degree in education, as well as recognition of her expertise through progressively responsible positions directly related to this specialty. The evaluation submitted by the petitioner from FCE, together with the supporting documentation submitted, does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) as it does not demonstrate that [REDACTED] have the authority to evaluate foreign educational credits, experience, training, and/or courses taken at other U.S. or international universities, and to determine whether credit would be awarded to a student by the University or that either of these individuals have the authority to grant such credit for training and/or experience at an accredited college or university with a program for granting such credit based on an individual's training and/or work experience. Therefore, the evaluation does not meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Additionally, even though counsel claims in response to the RFE that South Carolina does not require that teachers be licensed for private facilities, counsel did not cite to any provision or provide any documentation that South Carolina does not regulate caregivers or that the beneficiary meets or is exempt from any state requirements for caregivers, even though the *Handbook* notes that each state has its own licensing requirements that regulate caregiver training. Moreover, the petitioner states in response to the RFE that child care center staff members in South Carolina must have at least six months of experience as child center personnel in a licensed/approved facility in addition to having a high school diploma or GED. Again, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

As such, the petition could not be approved for these additional reasons even if eligibility for the benefit sought had been otherwise established.

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.

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