

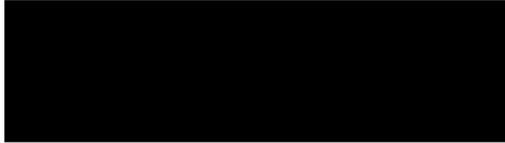
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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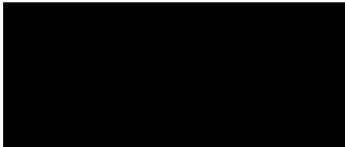
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JAN 19 2011**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director recommended the denial of the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO). The director's decision will be withdrawn. The petition will be approved, valid until June 30, 2012.

The petitioner is an educational institution that seeks to employ the beneficiary as a full-time science/physics teacher. Accordingly, 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On January 13, 2010, the director recommended that the petition be denied and certified her decision for review to the AAO. The AAO bases its review on the record as presently constituted, which includes: (1) the petitioner's 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 Notice of Certification (Form I-290C), with a copy of the director's decision recommending the denial of the petition attached; and (5) counsel's letter responding to the director's Notice of Certification with supporting documentation. The AAO reviewed the record in its entirety before issuing this decision.

The petitioner is a community middle school in Columbus, Ohio. In Ohio, the term "community school" is used to refer to a public charter school. The petitioner wants to hire the beneficiary to work full-time as a science/physics teacher. The beneficiary has a U.S. Master's Degree in Physics from the University of Pittsburgh. Additionally, the beneficiary holds a "5 Year Long Term Substitute License" from the State of Ohio's Department of Education. The license is valid from July 1, 2007 to June 30, 2012 and authorizes the beneficiary to teach adolescents to young adults (grades 7-12) the subject of physical science/physics. The petitioner requested that the beneficiary work from October 26, 2009 to October 26, 2012.

On November 24, 2009, the director issued an RFE requesting evidence that the beneficiary is qualified to perform in the claimed specialty occupation. Specifically, the director noted that the beneficiary's license is for a substitute teacher when the petitioner intends to employ the beneficiary full-time. Therefore, the director requested evidence that the beneficiary is licensed to teach as a full-time science/physics teacher in Ohio for the duration of the dates requested in the petition, including an original letter from the State of Ohio Department of Education.

In response, counsel argued that the beneficiary's long term substitute license is valid for teaching full-time in an Ohio community school. In support of this argument, counsel submitted three letters.

The first letter was from [REDACTED] Superintendent of Concept Schools – South Ohio Regional Office. This letter states that the beneficiary meets the Highly Qualified Teachers (HQT) requirements to be employed with the petitioner as a science/physics teacher for the following reasons:

- 1) He has completed a four-year bachelor's program in the field of physics at Middle East Technical University in Turkey.
- 2) He already has state licensure in his teaching assignment.

- 3) He has completed a Master's degree program in the field of core academic subject, which is physics, at the University of Pittsburgh.
- 4) He worked as a science teacher at a charter school in Ohio for two years.

The second letter submitted was from [REDACTED] and is dated October 16, 2009. This letter stated that "[t]he long term substitute license is valid for fulltime teaching in an Ohio community school." [REDACTED] also noted that:

all community school teachers must also meet federal [HQT] requirements for the core academic classes they are assigned to teach. It is important to note that while the long term substitute license fulfills the requirement in Section 2 of the ODE HQT worksheet in community schools, the teacher must meet the remainder of the criteria on the worksheet. Although the statement following the "Section 2" indicates that "*Conditional teaching permits or substitute licenses do not meet this requirement*", **community schools in Ohio are exempt from this rule.**

The third letter submitted was also from [REDACTED] and is dated December 28, 2009. This letter states that:

Based upon a review of licensure documents submitted to ODE, [the beneficiary] has been issued a five year long term substitute license for Science/Physics Teacher, with which he is permitted to be employed by a community school to teach as a fulltime Science/Physics teacher provided that he also meets [HQT] requirements.

Ohio requires all districts, including community schools to assure that each teacher meets federal [HQT] requirements for the core academic classes they are assigned to teach. To meet [HQT] Status in Ohio, teachers must have at least a bachelor's degree, a certificate/license that is appropriate to their teaching assignment, and be able to demonstrate their subject area expertise in the core academic subject(s) they teach.

The petitioner also submitted a blank HQT worksheet. Counsel outlined the HQT steps and explained how the beneficiary meets the HQT standards. Counsel noted that for Section 1, which asks if the applicant has at least a bachelor's degree, the response is "yes." Counsel further noted that for Section 2, which asks if the beneficiary holds full state certification/licensure, the answer is also "yes" because, although the worksheet indicates that substitute teaching licenses do not meet this requirement, community schools in Ohio are exempt from this rule as indicated in the letter from the ODE. For Section 3, which requires only one "yes" answer, counsel states that the beneficiary meets the second option because he has more than 30 semester hours in the core academic subject. Counsel noted that the beneficiary did not have to complete Section 4, regarding the Ohio HQT Rubric and HQT Expanded Rubrics, because he already qualifies as a HQT by satisfying Sections 1, 2 and 3 of the worksheet. Therefore, counsel concludes that the beneficiary meets the requisite HQT standards and thus is qualified to work as a full-time science/physics teacher with the petitioner.

The sole basis for the director's recommendation to deny the petition is that the director found that the petitioner failed to demonstrate that the beneficiary possesses the appropriate licensure or to establish an exemption or exception from the requirement for licensure. In making this determination, the director focused on Section 2 of the HQT worksheet, which asks whether the applicant holds full state certification/licensure in the teaching assignment, and concluded that conditional teaching permits or substitute licenses do not meet this requirement.

The director noted that the beneficiary holds a five year long term substitute teaching license and stated as follows:

According to the Ohio Center for Substitute Teachers, "Substitute teachers are needed when regular classroom teachers and aides are sick, on vacation, are participating in professional development activities, which take them away from the class." Substitute teachers in Ohio "...learn from experienced teachers..."

The director further stated that in Ohio, there are two programs to become a teacher: the Ohio Initial Teaching Certification and the Ohio Alternative Teacher Certification. Because the petitioner did not submit evidence that the beneficiary possessed either the Ohio Initial Teaching Certification or the Ohio Alternative Teacher Certification along with evidence that the beneficiary scored at least 100 points on the Ohio HQT Rubric or the Ohio Expanded Rubric, which the director stated is required under the federal criteria for Ohio, the director concluded that the beneficiary does not possess the appropriate licensure for the proffered position as he only possesses a five year long term substitute teaching license. Additionally, the director found that the letter from the ODE was not sufficient to demonstrate that the beneficiary is qualified and permitted to teach as a full-time Science/Physics Teacher for the full three years as requested. Consequently, the director recommended that the petition be denied.

In response to the director's recommendation, counsel argues that the director did not provide a sufficient basis for disregarding the ODE letter from [REDACTED] as evidence that a teacher can teach full-time at an Ohio community school with a long-term substitute teaching license. Counsel resubmits the letters from [REDACTED] as well as the letter from [REDACTED]. Counsel further argues that the HQT worksheet previously submitted demonstrates that the beneficiary satisfies the federal definition of HQT standards through his answers to the first three sections and, therefore, he is not required to score 100 points on the Ohio Highly Qualified Teacher Rubric or the Ohio Highly Qualified Teacher Expanded Rubric, which is discussed in Section 4 of the worksheet, a section that does not need to be completed if Sections 1-3 are satisfied.

Upon review of the entire record of proceeding, the AAO has determined that the basis for the director's recommendation to deny the petition is incorrect and will therefore be withdrawn. The evidence of record establishes that the beneficiary satisfies the regulatory requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C) for service in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In addition, pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license “prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.”

Pursuant to 8 C.F.R. § 214.2(h)(4)(v)(B), if a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

Where licensure is required in any occupation, 8 C.F.R. § 214.2(h)(4)(v)(E) specifies that the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. This regulation also provides that an alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year, unless he or she has (1) obtained a permanent license in the state of intended employment, or (2) continues to hold a temporary license valid in the same state for the period of the requested extension.

In explaining why the basis for the director's decision must be withdrawn, the AAO takes administrative notice of the Elementary and Secondary Education Act, also known as the No Child Left Behind Act of 2001 (hereinafter "NCLB"), Pub. L. No. 107-110, 20 United States Code §§ 6301 et seq., as well as the laws pertaining to licensing requirements for teachers at community schools in Ohio.

NCLB requires all public school teachers (including charter school teachers) of core academic subjects to be highly qualified by the end of school year 2005-2006. According to NCLB § 9101(11), "The term 'core academic subjects' means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography." Therefore, as the beneficiary would teach science in a public charter school, he must demonstrate that he is highly qualified under NCLB.

NCLB § 9101(23), which defines the term "highly qualified" reads as follows:

- (23) HIGHLY QUALIFIED - - The term 'highly qualified' - -
 - (A) when used with respect to any public elementary school or secondary school teacher teaching in a State, means that - -
 - (i) the teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State, *except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law*; and
 - (ii) the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis;
 - (B) when used with respect to - -
 - (i) an elementary school teacher who is new to the profession, means that the teacher - -
 - (I) holds at least a bachelor's degree; and

(II) has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum); or

(ii) a middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor's degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by - -

(I) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

(II) successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing; and

(C) *when used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means that the teacher holds at least a bachelor's degree and - -*

(i) has met the applicable standard in clause (i) or (ii) of subparagraph (B), which includes an option for a test; *or*

(ii) *demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation that - -*

(I) is set by the State for both grade appropriate academic subject matter knowledge and teaching skills;

(II) is aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;

- (III) provides objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects in which a teacher teaches;
- (IV) is applied uniformly to all teachers in the same academic subject and the same grade level throughout the State;
- (V) takes into consideration, but not be based primarily on, the time the teacher has been teaching in the academic subject;
- (VI) is made available to the public upon request; and
- (VII) may involve multiple, objective measures of teacher competency.

(Emphasis added.)

From this, the AAO finds that NCLB carves out an exemption for public charter schools in that to be considered highly qualified, a teacher need only meet the licensing requirements under the state's public charter school law, rather than holding full state teacher certification or having passed the state's licensing exam in addition to holding a license. In other words, under NCLB, although all of Ohio's community school teachers are required to meet HQT requirements to teach core academic classes, there is some flexibility for these schools regarding teacher licensure requirements. Additionally, as the beneficiary is not new to the profession of teaching, under NCLB he must hold at least a bachelor's degree and either pass a rigorous state test or demonstrate competence in the academic subject that he will teach based on a uniform state standard for evaluation.

According to the ODE's Community Schools Guidance Letter #2010-3 (Effective June 8, 2010), of which the AAO takes administrative notice, a highly qualified teacher for community schools in Ohio is defined as someone:

who [has] at least a bachelor's degree, a teaching certificate/license *other than a short-term substitute or non-tax*, and the ability to demonstrate their subject area expertise in the core academic subjects they teach (English, language arts, reading, science, mathematics, government and civics, history, economics, geography, music, visual arts, dance, drama, foreign language).

(Emphasis added.)

Further, according to this Guidance Letter:

The U.S. Department of Education (USDOE) requires all recipients of federal grant funds to meet state licensure standards, including federal HQT requirements, except

when applied to public charter school teachers. It also requires charter school teachers to meet the certification and licensure standards set forth in each state's public charter school law.

Although Ohio's community school law allows some flexibility in meeting teacher licensure requirements, *ODE requires all community school teachers to meet HQT requirements for the core academic classes they are assigned to teach in a community school.*

ODE issues both short-term *and long-term substitute teaching licenses. These licenses are issued to qualified bachelor's degree holders upon the request of an employing Ohio school district.*

A long-term substitute license is issued for a specific teaching area in which a person has completed the necessary prerequisite coursework for the teaching area that is requested. Long-term substitute teaching licenses are issued as one-year licenses or as five-year licenses. The only difference in the licenses is the cost.

(Emphasis added.) It is clear that, although the beneficiary has received a long-term substitute teaching license from ODE, this license has been issued specifically for the field in which the beneficiary intends to teach – namely, physical science/physics. Additionally, in order to receive this license, the beneficiary had to demonstrate that he had at least a bachelor's degree as well as the necessary prerequisite coursework for the teaching area of physical science/physics. Therefore, the beneficiary holds an Ohio state teaching license certifying him to teach in the specific specialty of physical science/physics. Moreover, the letters from [REDACTED], who is the

satisfy the petitioner's burden of proof by demonstrating that the beneficiary's long-term substitute teaching license to teach physical science/physics does not restrict him to work only as a substitute teacher and instead authorizes him to teach the subject full-time at an Ohio community school without restriction.

Additionally, under Ohio Revised Code § 3319.074(3), "a 'Highly qualified teacher' means a classroom teacher *who satisfies all of the following conditions*":

- (a) Holds a baccalaureate degree;
- (b) Is fully licensed or is participating in an alternative route to licensure in which the teacher receives professional development and mentoring, teaches for not longer than three years, and demonstrates satisfactory progress toward becoming fully licensed;
- (c) If teaching in grades kindergarten through six, satisfies at least one of the following:
 - (i) Passage of an assessment of subject matter content and professional knowledge required for licensure;

- (ii) Successful completion of a graduate degree or advanced certification in the teaching assignment;
 - (iii) Achievement of one hundred points on the Ohio highly qualified teacher rubric developed by the Ohio department of education;
 - (iv) Completion of an individual professional development program approved by the applicable local professional development committee that includes ninety hours of high quality professional development incorporating grade appropriate academic subject matter knowledge, teaching skills, and state academic content standards.
- (d) If teaching in grades seven through twelve, *satisfies at least one of the following*:
- (i) Passage of an assessment of subject matter content required for licensure;
 - (ii) Successful completion of either an undergraduate academic major, coursework equivalent to such major, a graduate degree, or advanced certification in each subject area in which the teacher provides instruction;
 - (iii) Achievement of one hundred points on the Ohio highly qualified teacher rubric developed by the department;
 - (iv) Completion of an individual professional development program approved by the applicable local professional development committee that includes ninety hours of high quality professional development incorporating grade appropriate academic subject matter knowledge, teaching skills, and state academic content standards.

(Emphasis added.) Therefore, as the beneficiary holds a Master's degree, is fully licensed to teach physical science/physics in the petitioner's community school, and has satisfied at least one of the criteria under Ohio Revised Code § 3319.074(3)(d) through the completion of his graduate degree in the subject area in which he will provide instruction, counsel is correct that it is not necessary for the beneficiary to also achieve one hundred points on the Ohio highly qualified teacher rubric. As such, the petitioner has demonstrated that the beneficiary meets the HQT qualifications both under NCLB and Ohio law.

As the beneficiary has a teaching license authorizing him to teach science/physics full-time at the petitioner's community school and as the petitioner has demonstrated that the beneficiary has met the HQT qualifications to teach physical science/physics at the petitioner's community school in Ohio, the petitioner has met its burden of proof in establishing that the beneficiary possesses the appropriate licensure as required by the proffered position and that the beneficiary qualifies to perform the duties of the proffered specialty occupation.

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. However, since the beneficiary's license expires on June 30, 2012, the petition should be approved only through that date, rather than through October 26, 2012 as was requested in the petition.

ORDER: The director's January 13, 2010 decision is withdrawn. The petition is approved, valid until June 30, 2012.