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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
and Immigration
Services

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Date: NOV 01 2010 Office: CALIFORNIA SERVICE CENTER

FILE:

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 service center director denied the nonimmigrant visa petition, and an I-290B appeal form was submitted to the AAO. The AAO rejected that appeal as having been filed by a person not entitled to file it, but reopened the matter *sua sponte*. In that latter decision the AAO accorded the petitioner 30 days to submit a brief. No brief was received in the allotted time, and the AAO will adjudicate the visa petition based on the evidence now in the record. The appeal will be dismissed. The petition will be denied.

The petitioner is a state university. To employ the beneficiary in a position it designates as a "Per Course Instructor in English Department" position, 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 beneficiary is qualified for the proffered 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 proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's denial letter; and (3) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

The H-1B visa category pursuant to which the visa petition was filed is for specialty occupation workers. 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*.

The degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *See Matter of Michael Hertz, Assoc.*, 19I&N Dec. 558,560 (Comm. 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

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.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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 [a] 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 [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner must also establish either that the beneficiary has a minimum of a U.S. bachelor's degree in the specialty that the occupation requires, or has, within the meaning of section 214(i)(2) of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(C), the equivalent of such a U.S. degree.

On the visa petition, the petitioner stated that it would employ the beneficiary for ten hours per week from May 18, 2009 to May 31, 2010. The wage that she would be paid was not revealed in the visa petition, but the AAO notes that the LCA states that she must be paid a minimum of \$22.11 per hour. The AAO notes that ten hours of work per week at \$22.11 per hour equates to an annual salary of \$11,497.20.

The director denied the visa petition on July 29, 2009, finding that the petitioner failed to provide evidence pertinent to the beneficiary's foreign degrees. On appeal, counsel provided copies of the beneficiary's bachelor's degree diploma and her master's degree diploma, with English translations of those diplomas. Those documents do not contain any reference to the beneficiary's claimed specialty in teaching English as a second language or her claimed specialty in English literature, and they are not accompanied by related academic transcripts, properly translated and certified as accurate in accordance with the regulation at 8 C.F.R. § 103.2(b)(4). Further, counsel did not provide an evaluation of the beneficiary's foreign education and degrees to show that they are equivalent to a minimum of a U.S. bachelor's degree. The AAO notes that such an evaluation is required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

Without any evidence to demonstrate that the beneficiary's asserted foreign bachelor's and master's degrees are equivalent to at least a U.S. bachelor's degree, the AAO is unable to find that the beneficiary is qualified to work in any specialty occupation. This is sufficient reason, in itself, to dismiss the appeal and deny the visa petition. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

Beyond the director's decision, the AAO finds that the petitioner has failed to establish that the beneficiary would be employed in a specialty occupation. For this reason also, the visa petition must be denied.³

As was explained above, the petitioner is obliged to demonstrate that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The proffered position is "Per Course instructor in English Department." As was also noted above, that job title suggests that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specialty related to English or English Literature.

However, the evidence submitted indicates that the beneficiary would teach only one English class during the period of requested employment, *i.e.* English 110. Whether the material to be taught in that class, by a "per course teacher," is at a level that its teaching would require a degree in English Literature or English Philology, the evidence of record does not establish, and the petitioner and counsel have not explicitly alleged it to be so.

³ Further, the 2011 poverty threshold for a single person is \$10,890. *See* 2011 Poverty Guidelines at <http://aspe.hhs.gov/poverty/11fedreg.shtml>. The visa petition states that the petitioner would employ the beneficiary for ten hours per week, and the LCA states that the petitioner would be obliged to pay the beneficiary \$22.11 per hour. The petitioner would be obliged, therefore, to pay the beneficiary \$221.10 per week, which equates to \$11,497.20 annually. Although this is above the poverty threshold for a single person, the record does not make clear whether the beneficiary would be accompanied by any family members. Because the issue of inadmissibility is not before the AAO, it will not further analyze the issue. The AAO notes, however, that the petitioner would be obliged to show that the beneficiary and any accompanying family members are unlikely to become public charges in order to avoid inadmissibility pursuant to section 212(a)(4)(A) of the Act.

Her remaining duties would be to teach a class in Women's Studies and URI 101, the Feinstein Enriching America Program. The titles and descriptions of those courses suggest that they are only peripherally related to English language and English literature, and that teaching them does not require a degree in English Language, English Literature, English Philology, or any other closely-related subject.

The petitioner has not demonstrated, nor even, as such, alleged that the proffered position requires a degree in any specific specialty. The proffered position has not, therefore, been shown to be a position in a specialty occupation, within the meaning of section 214(i)(1) of the Act. The appeal will be dismissed and the visa petition denied on this basis.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.