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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

JAN 22 2002

File: EAC-00-228-51277 Office: Vermont Service Center Date:

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a bilingual nursery school with ten employees and an approximate gross annual income of $650,000. It seeks to extend its authorization to employ the beneficiary as a lead teacher for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the petitioner had not established that the proffered position requires an individual who possesses a bachelor's degree in a specific field of study. On appeal, counsel contends that the petitioner normally requires a baccalaureate degree or its equivalent for the position of lead teacher as evidenced by the fact that all individuals employed by the petitioner in the lead teacher position hold at least a baccalaureate degree.

The duties of the proffered position are described in pertinent part as follows:

* to plan, develop and execute a developmentally appropriate curriculum in both French and English;

* To introduce the French language and culture through developmentally appropriate activities;

* To write French lesson plans for both Preschool I and Preschool II children;

* To organize daily planning and to supervise the execution of all classroom and outdoor activities;

* To train and supervise teachers and assistant teachers;

* To observe and write children's evaluation for the parent conference held twice a year;

* To plan and run weekly team meetings; and

* To attend recommended workshops, conferences and all in-house training (at least twenty hours per annum).

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

3. The employer normally requires a degree or its equivalent for the position; or

4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding.

The Service does not agree with counsel's argument that the proffered position requires a baccalaureate degree in a specialized area. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 354 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a preschool teacher. Some preschool teachers hold baccalaureate or higher degrees while others hold associate (two-year) degrees or high school diplomas.

Counsel argues on appeal that the petitioner requires at least a baccalaureate degree for the position of lead teacher. In response to a Service request for additional information, the petitioner submitted a copy of its hiring policy for the lead teacher position. According to this document, the petitioner requires a bachelor's degree or master's degree in child studies or early childhood education and an in-depth knowledge of the French

language, along with at least two years of experience as a lead teacher. Counsel submits on appeal a list of the lead teachers employed by the school and their resumes. Two of the lead teachers have a bachelor's degree in early childhood education and two do not. Thus, it appears that the petitioner prefers to hire individuals with a bachelor's degree in early childhood education for the lead teacher position, but the evidence of record does not show that such degree is a requirement for the position.

Counsel also submits on appeal three letters from preschool administrators in the New England area. Dorothy H. Hale, Head of School of The French American School of Boston, states in her letter that the French American School requires a minimum of a bachelor's degree in education or its French equivalent for its preschool teachers. Ms. Ida Friedmann, Directrice of the Wellesley Montessori School in Wellesley, Massachusetts, states that a bachelor's degree and an accredited Montessori certification are required for the head teacher position at that school. According to Dominique Thompson, Head of School of the French-American School of Rhode Island, the State of Rhode Island requires that independent schools hire teachers with a bachelor's degree or foreign equivalent. Thus, two of the three schools require a bachelor's degree, but they do not require that the degree be in the specialized area of early childhood education.

Counsel also submits a job advertisement for a position as a preschool/kindergarten program coordinator at the John Hancock Child Care Center. According to the ad, the position requires a bachelor's degree in early childhood education or a related field, but a master's degree is preferred. However, three letters and one job advertisement are not sufficient to establish that the degree requirement is common to the industry in parallel positions among similar organizations.

Finally, the petitioner has not shown that the nature of the specific duties is so specialized and complex that knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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 not sustained that burden.

ORDER: The appeal is dismissed.