U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

D1

PUBLIC COPY

[redacted]

FILE: WAC 04 058 51690 Office: CALIFORNIA SERVICE CENTER Date: FEB 05 2007

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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the petitioner filed an appeal. Upon review of the file, the Administrative Appeals Office (AAO) issued a notice of intent to dismiss the appeal with a finding of fraud. Counsel for the petitioner submitted a response to the notice of intent to dismiss. The AAO has reviewed the response and will dismiss the appeal. The petition will be denied.

The petitioner is a private school that provides early childhood education and has eight employees. It seeks to employ the beneficiary as a kindergarten teacher. Accordingly, it 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 March 31, 2004, the director denied the petition determining that the record did not establish that the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel for the petitioner asserts the director's decision is in error as "two experts recognized by the INS [legacy Immigration and Naturalization Services] state that she has the equivalent of a Bachelor's degree." The issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform services in a specialty occupation.

The record contains: (1) the Form I-129 filed December 23, 2003 and supporting documentation; (2) the director's January 2, 2004 and March 10, 2004 requests for further evidence (RFE); (3) counsel's February 18, 2004 response to the director's RFE; (4) an envelope that was received by Citizenship and Immigration Services (CIS) sealed and once opened contained a copy of the beneficiary's transcript from [redacted] for the [redacted] of Education in Colombo, Sri Lanka; (5) the director's March 31, 2004 denial decision; (6) the Form I-290B and counsel's April 14, 2004 brief and documentation in support of the appeal; (7) a July 12, 2004 letter from an individual questioning the authenticity of the beneficiary's foreign employment; (8) the AAO's notice of intent to dismiss the appeal and request for evidence to clarify and substantiate the beneficiary's work experience and any other documentation that would establish the beneficiary's qualifications for the proffered position; and (9) counsel's response and documentation to the AAO's notice of intent to dismiss. The AAO reviewed the record in its entirety before rendering this decision.

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.

At the time of filing the petition, the petitioner indicated that it wished to hire the beneficiary who held a diploma from [redacted] for the Montessori Method of Education in Colombo, Sri Lanka and had 12 years of employment experience as a teacher at A.M.I. Montessori House of Children in Colombo, Sri Lanka. The petitioner also referenced credentials evaluations indicating that the beneficiary had the equivalent of a U.S. bachelor's degree in early childhood education.

The record does not evidence that the beneficiary holds a United States baccalaureate or higher degree in education or any other field, as required to establish that the beneficiary is qualified pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*). Neither does the record provide evidence establishing that the beneficiary's one-year foreign diploma from Marian Training Centre for the Montessori Method of Education is equivalent to a United States baccalaureate or higher degree as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*). The petitioner has provided no evidence that the beneficiary has a teaching credential; thus the petitioner may not establish the beneficiary's qualifications under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*3*). Rather, the petitioner claims that the beneficiary has one-year of education in the Montessori Method of Education and progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for a H-1B nonimmigrant visa based on:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record does not contain evidence that the beneficiary is qualified for an H-1B nonimmigrant visa based on the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(*1*), (*2*), (*3*), or (*4*). Instead counsel appears to state that the beneficiary is qualified to perform the services of a specialty occupation because her education and work experience have been determined to be equivalent to a baccalaureate degree in education by at least two recognized authorities in the field under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*).

The record contains two educational credentials evaluations, one by Professor [redacted] of Indiana University Department of Education dated March 1, 2004 and the second by Professor [redacted] of Teachers College, Columbia University, Department of Curriculum and Teaching, dated February 10, 2004. Neither of these equivalency evaluations may be considered under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*), which requires that an evaluation of education and work experience be from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

Upon review of the beneficiary's education and work experience, Dr. [redacted] concludes in his evaluation that the beneficiary has the equivalent of a baccalaureate degree in education from an accredited college or university in the United States. Although the July 18, 2003 letter from Dr. [redacted], Assistant Dean, Accreditation, School of Education, Indiana University, suggests that Dr. [redacted] has the authority to grant college level credit for training and/or experience in the specialty, and that Indiana University has a program for granting such credit in the specialty, Dr. [redacted] September 21, 2006 letter states that the School of Education does not award or accept credits toward academic requirements based on work experience. Thus, Dr. [redacted] letter does not establish the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*).

Dr. [redacted] states that he is qualified to comment on the beneficiary's work experience because of the positions he has held at Columbia University. Upon review of the beneficiary's credentials, Dr. [redacted] concludes that the beneficiary's combined education and work experience is equivalent to a bachelor of education, with a concentration in early childhood education. The AAO may not accept this evaluation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*), as no evidence of record establishes that Dr. [redacted] has the authority to grant college-level credit for training and/or work experience, and that Columbia University has a program for granting such credit.

Turning to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), the AAO acknowledges counsel's statement that the two evaluations establish the beneficiary's qualifications under this criterion. The AAO disagrees. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), Citizenship and Immigration Services (CIS) must make the determination as to whether the beneficiary has acquired the equivalent of a degree through a combination of education, specialized training, and/or work experience in areas related to the specialty. To meet this first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), CIS must consider whether the beneficiary's work experience coupled with her one-year of foreign formal education is sufficient to establish that she is qualified to perform the duties of the specialty occupation. In this matter it is not.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The only available information in the record regarding the beneficiary's work experience is the two letters submitted by the beneficiary's foreign employer.

The record contains several copies of a letter dated May 5, 2003 and February 9, 2004. Although the letters contain different dates, the letters contain the same text, indicating briefly that the beneficiary "worked as teacher from May 1991 to April 2003 at Montessori School in three (3) different locations." The letters also referenced the beneficiary's training from January 1990 to May 1991 and acceptance as a fully qualified teacher after receiving her Montessori certificate.

The record also includes a February 9, 2004 letter that expands upon the one-page letter referred to above. The February 9, 2004 expanded letter from the beneficiary's foreign employer states that the beneficiary had been employed: (1) from 1991 to 1993 as a Montessori teacher for the two to three and a half year old age group and indicates that the beneficiary was responsible for teaching groups of students the four basic elements in the Montessori method of education - practical life exercise, sensorial exercise, mathematics, and languages; (2) from 1993 to 1995 as a pre-kindergarten teacher and indicates that the beneficiary continued to teach the same four basic elements for the pre-kindergarten age group and prepared materials to enhance the children's reading and math skills; and (3) from 1994 to 2003 as a kindergarten class head teacher and that indicates that the beneficiary had a greater responsibility to further the education of the children by using the same method of teaching but using more advanced material. The letter also provides a brief overview of the duties involved in teaching practical life exercise, sensorial exercise, mathematics, and languages as well as indicating the beneficiary included art and music in teaching gross motor skills. The beneficiary's foreign

employer further indicates that as a pre-kindergarten and a kindergarten teacher, the beneficiary communicated with parents, assistant teachers, and the administration to implement school policies.

The AAO does not find the information in either of the letters submitted by the beneficiary's prior employer sufficient to establish that the beneficiary's work experience included the theoretical and practical application of the specialized knowledge required by the specialty occupation or that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The record does not contain evidence of the beneficiary's peers, supervisors, or subordinates while working at the school or whether these individuals held degrees or specialized knowledge associated with a bachelor's degree in early childhood education. The AAO also finds the brief description of the beneficiary's duties insufficient to demonstrate that the beneficiary's work experience included the theoretical and practical application of the specialized knowledge required of an individual who through study has attained a bachelor's degree in childhood education. Although the letters suggest that the beneficiary gained experience and greater responsibility as she transferred to teaching older age groups, the letters do not describe the beneficiary's actual daily duties in detail. The letters also fail to discuss how the beneficiary's work experience with her peers, supervisors, or subordinates comprised an atmosphere conducive to obtaining knowledge that consequentially progressed to the equivalent of a bachelor's degree or its equivalent in the field.

The record lacks evidence that demonstrates that the beneficiary has attained the equivalent of a bachelor's degree in education through a combination of her education, specialized training, and work experience. The petitioner has not established the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). For this reason, the AAO determines that the petitioner has not established that the beneficiary is qualified to perform the duties of the specialty occupation.

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) requires that the petitioner document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. Counsel relies on and contends that the two opinion letters submitted by Professor [redacted] and Professor [redacted], recognized authorities in the field of education, constitute recognition of the beneficiary's expertise in the specialty occupation of education.

Recognized authority means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinion, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(i)(C)(ii).

The record contains a March 1, 2004 evaluation letter authored by Dr. [redacted] indicating that he had reviewed the beneficiary's diploma from Marian Training Centre for the Montessori Method of Education and her thirteen years of professional training and development in the field of education. Dr. [redacted] concluded

that "[c]onsidering the thirteen years of progressively responsible work experience in the fields of Education, and considering the completion of a Diploma from the [redacted]," that the beneficiary has the equivalent of a bachelor's of education degree in the United States.

The record also contains a second evaluation of the beneficiary's academic and employment experience prepared by Professor [redacted] dated February 10, 2004. Professor [redacted] indicates that he is qualified to comment on the beneficiary's work experience because of the positions that he has held at Teachers College Columbia University. Professor [redacted] notes that the evaluation is based on the beneficiary's academic record and "thirteen years of progressively responsible qualifying work experience in Education and related areas." Professor [redacted] states that it is his judgment when considering the beneficiary's hours of academic coursework and thirteen years of work experience that the beneficiary has attained the academic equivalent of a Bachelor's of Education degree with a concentration in early childhood education from an accredited institution of higher education in the United States.

Both Professor [redacted] and Professor [redacted] eference materials provided by the beneficiary as the basis for their conclusions. Both writers re-state the information listed in the February 9, 2004 letter written by the beneficiary's foreign employer to support their conclusion that the beneficiary has attained the academic equivalent of a bachelor's of education degree. The AAO acknowledges that Professor Anderson and Professor Borland are recognized authorities in the field of education and that the writers have experience giving opinions. Thus, the petitioner has established that the beneficiary has recognition of experts under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). However, the letters do not persuade the AAO that the beneficiary has the equivalent of a bachelor's degree in education. The AAO considered the letters when analyzing whether the beneficiary had the equivalent of a baccalaureate degree in the field under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). Neither writer explains how they reached their conclusion that the beneficiary's 12 years of work experience included the same or similar types of knowledge obtained through an additional three years of university-level study in the field of education. Neither writer provides an analysis of the beneficiary's experience and how the briefly described experience equates to particular courses of study at the university level. The writers do not provide examples of how the beneficiary's length of time in a particular position contributes or is otherwise equal to college-level courses. Moreover, the record does not contain evidence that the writers interviewed the beneficiary, the beneficiary's foreign employer, researched the foreign employer's school and its accreditation, if any, or otherwise investigated the beneficiary's foreign work experience, including the time she may have spent in the classroom. The writers do not expound upon their expertise, if any, regarding Sri Lankan private preschools and whether those schools require advanced training, whether the described position is a full or part-time position, or whether the stated curriculum requires the theoretical and practical application of specialized knowledge equivalent to a U.S. bachelor's degree in education.

The AAO does not impugn the expertise of these professors in their field of education; however, the AAO cannot accept the professors' repetition of the beneficiary's foreign employer's statement of the beneficiary's work experience as an analysis of the beneficiary's attainment of specialized knowledge in the field of childhood education. Where an opinion is in any way questionable, the AAO may discount it or give it less weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has not provided expert opinions that contain evidence substantiating any conclusions regarding the beneficiary's expertise in the specialty occupation. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). For this additional reason, the petition will be denied.

The AAO also requested documentary evidence to establish that the A.M.I. Montessori House of Children in Colombo, Sri Lanka employed the beneficiary from May 1991 to April 2003, as CIS had received derogatory evidence regarding the beneficiary's claimed employment. In response counsel for the petitioner provided an undated letter from the beneficiary's foreign employer stating that it could not furnish copies of the beneficiary's salary slips "as it is a lapse of period of more than 15 years." The letter also indicated that the beneficiary had received a salary of three thousand rupees per month beginning in 1991 and at leaving in 2003 was receiving eight thousand rupees per month that was not taxable.

The beneficiary provided a letter stating that she had misplaced copies of her pay slips. She also indicated her belief that the derogatory information submitted by a third party was given to CIS due to jealousy. The beneficiary provided copies of the pages of her passports, including passport number [redacted] issued in 1994 and cancelled in 2004. The pages of passport [redacted]1 contain numerous illegible arrival and departure stamps. The AAO cannot determine from the pages submitted when the beneficiary was in Sri Lanka and when the beneficiary had departed from Sri Lanka during this time period. The AAO notes that the beneficiary is in the best position to organize and submit proof of her departures from and reentry into Sri Lanka. Copies of passport stamps even if legible without an accompanying statement or chart of dates the beneficiary spent outside Sri Lanka, could be subject to error in interpretation and may not be considered probative. In this matter, the evidence of record does not confirm that the beneficiary remained in Sri Lanka from May 1991 to April 2003 and thus does not confirm that the beneficiary was employed in Sri Lanka during this time period.

The record does not contain independent documentary evidence substantiating the beneficiary's claim that she was employed in Sri Lanka as a preschool and kindergarten teacher for twelve years beginning in 1991 through 2003. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For this additional reason, the petition will be denied.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the director's decision will be affirmed.

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