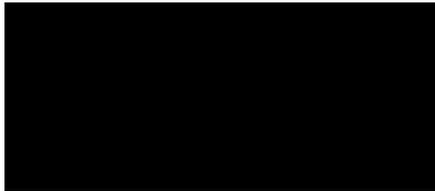


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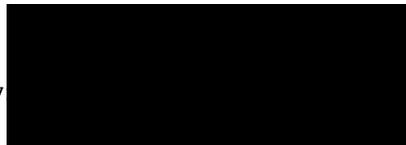


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FILE: LIN 00 263 51230 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

ON BEHALF OF PETITIONER:



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, Director
Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center denied the nonimmigrant visa petition because the proffered position did not qualify as a specialty occupation. In a subsequent appeal, the AAO determined that the proffered position qualified as a specialty occupation, but remanded the decision to the director to determine whether the beneficiary was qualified to perform the duties of a specialty occupation. The director denied the petition and certified his decision to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The petition will be denied.

The petitioner is a commercial dairy operation that seeks to employ the beneficiary as a dairy management specialist. The petitioner, therefore, 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).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. Counsel has not submitted any additional information in response to the director's notice of certification.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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, an 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.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letters; (5) Form I-290B and supporting documentation; and (6) the AAO's remand decision. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a dairy management specialist. The petitioner indicated in its September 1, 2000 letter that it wished to hire the beneficiary because he possessed the equivalent of a bachelor's degree in business administration from an accredited U.S. college or university. The petitioner stated that a dairy management specialist must hold a minimum of a bachelor's degree or its equivalent in a relevant field.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's experience was not equivalent to a baccalaureate degree in a specialty required by the occupation. In a letter dated June 3, 2003, counsel states that he is submitting new credential evaluations from two recognized experts in the field of agricultural science to demonstrate that the beneficiary is qualified for the proffered position.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in an agricultural-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (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 contains an evaluation from the Global Education Group, Inc., a company that specializes in evaluating academic credentials. The evaluator, Dr. [REDACTED] concluded that the beneficiary possesses the equivalent of a Bachelor of Science degree in business administration from a regionally

accredited U.S. university. In its May 1, 2003 decision, however, the AAO correctly found Dr. [REDACTED] decision insufficient in establishing that the beneficiary is qualified to perform the duties of the proffered position. The AAO will not repeat the content of its prior decision here, as that document is now a part of the record. Furthermore, a credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. In its May 1, 2003 decision, the AAO found the letters from the beneficiary's work colleagues and fellow farmers in South Africa insufficient in establishing that the beneficiary is qualified to perform the duties of the proffered position. As stated previously, the AAO will not repeat the content of its prior decision here, as that document is now a part of the record. Furthermore, as neither counsel nor the petitioner has addressed this portion of the AAO's findings, it need not be discussed further in this proceeding.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The record contains a second evaluation, dated May 30, 2003, from Dr. [REDACTED] Professor, Department of Agricultural

¹ *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 opinions, 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)(ii).

Education and Studies, Iowa State University, who concludes that the beneficiary holds the equivalent of a U.S. Bachelor of Science degree in agricultural studies. The record also contains a second evaluation, dated May 30, 2003, from Professor [REDACTED] Department of Dairy Science, Virginia Tech, who concludes that the beneficiary hold the equivalence of a bachelor's degree in dairy management. In its June 27, 2003 decision, the director found the opinions of Dr. [REDACTED] and Professor James insufficient in establishing that the beneficiary is qualified to perform the duties of a specialty occupation because the information used by Dr. [REDACTED] and Professor [REDACTED] in making their determinations was not provided to the director for review. For example, Dr. [REDACTED] states, in part, as follows:

The packet of information I reviewed provided evidence of 23 years of responsibility in commercial scale production farming as both owner and operator of Kroonplaats Farming Operation. In examining [the beneficiary's] file, I found evidence of experience of sound management abilities in agricultural production. [The beneficiary] has developed new solutions to production problems in livestock and crop production. He has managed breeding programs for cattle and sheep. . . .

In addition, Professor [REDACTED] states, in part, as follows:

There are numerous items in [the beneficiary's] dossier, which would lead me to affirm that his career experiences are the equal of and in fact exceed what we are able to teach at the Bachelor's degree level. . . . In addition, supporting letters from his veterinarian and extension officer attest to his ability and knowledge. . . . [The beneficiary] provides substantive evidence that he supervised the hiring, training and evaluation of an employee base and successfully managed the finances of his farming operation. . . .

Although the record contains letters from the beneficiary's accountant, chief agricultural technician, and veterinarian, such letters do not contain details of the beneficiary's work experience, such as those described in the opinions of Dr. [REDACTED] and Professor [REDACTED]. Furthermore, Dr. [REDACTED] does not describe what documents comprise the "packet of information" he reviewed, nor does Professor [REDACTED] describe what documents comprise the beneficiary's "dossier." As such, the petitioner has not overcome the objections of the director in his decision. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 director's June 27, 2003 decision is affirmed. The petition is denied.