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U.S. Citizenship  
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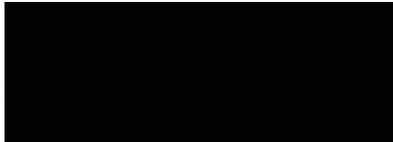


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FEB 24 2004

FILE: LIN 01 061 50918 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



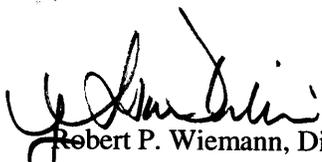
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)(2)

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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a ranch that seeks to employ the beneficiary, a citizen of Mexico, as a horse rancher. The petitioner, therefore, endeavors to classify the beneficiary as a TN-2 alien to perform services as a professional business person pursuant to section 214(e)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (e)(2).

The director denied the petition because the petitioner did not establish that the beneficiary would engage in business activities at a professional level.

On appeal, counsel states that the beneficiary would be performing the duties of a management consultant. Counsel also submits a revised affidavit from the beneficiary's former employer in Mexico.

Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)(2), states:

An alien who is a citizen of Canada or Mexico . . . who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15) . . . .

Pursuant to 8 C.F.R. § 214.6(b):

*Business activities at a professional level* means those undertakings which require that, for successful completion, the individual has a least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA.

The beneficiary of this petition is a citizen of Mexico. Pursuant to 8 C.F.R. § 214.6(d)(2), a petition on behalf of a citizen of Mexico seeking classification as a TN professional shall be accompanied by:

(i) A certification from the Secretary of Labor that the petitioner has filed the appropriate documentation with the Secretary in accordance with section (D)(5)(b) of Annex 1603 of the NAFTA.

(ii) Evidence that the beneficiary meets the minimum education requirements or alternative credentials requirements of Appendix 1603.D.1 of Annex 1603 of the NAFTA as set forth in § 214.6(c). This documentation may consist of licenses, degrees, diplomas, certificates, or evidence of membership in professional organizations. Degrees, diplomas, or certificates received by the beneficiary from an educational institution not located within Mexico, Canada, or the United States must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. Evidence of experience should consist of letters from former employers or, if formerly self-employed, business records attesting to such self-employment; and

(iii) A statement from the prospective employer in the United States specifically stating the Appendix 1603.D.1 profession in which the beneficiary will be engaging and a full description of the nature of the duties which the beneficiary will be performing. The statement must set forth licensure requirements for the state or locality of intended employment or, if no license is required, the non-existence of such requirements for the professional activity to be engaged in.

The documentation provided by the petitioner adequately establishes that the beneficiary would be performing horse care and maintenance of property duties. The job description submitted by the petitioner in response to the director's request for further evidence contains the following duties: raise livestock, such as horse, for riding or show; mix feed and feed supplements according to dietary requirements; feed, water, graze animals; observe animals to detect signs of illness and injury; treat minor injuries and ailments; and clean stalls and groom animals. Although counsel asserts that the position is that of a management consultant, the proposed duties are those of a horse rancher and stable attendant. Appendix 1603.D.1 to Annex 1603 of the NAFTA does not indicate that the work of horse ranchers requires a Baccalaureate or Licenciatura Degree; or state/provincial license.

It is a policy of CIS to not accept a combination of education, training and/or experience equivalent to a baccalaureate degree under TN classification. Neither the statute nor the regulations allow for the consideration of "work equivalency" in this nonimmigrant classification. A beneficiary must establish that he or she possesses the required baccalaureate degree, not the equivalent of such degree based upon his or her education, training, and/or work experience. Based on the documentary evidence in the record, the work that the beneficiary would perform is not found to be professional as outlined in NAFTA regulations, nor does the beneficiary possess a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA. Accordingly, the director's decision was appropriate.

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary meets the requirements for the classification sought, as defined under section 214(e) of the Act.

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 met that burden.

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