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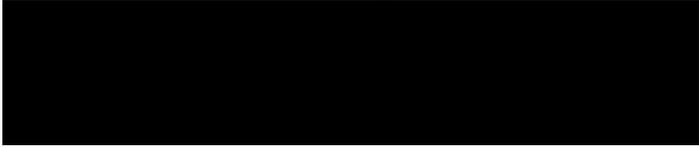
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, DC 20536

NOV 10 2003



File: LIN 02 158 52822 Office: NEBRASKA SERVICE CENTER Date:

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:



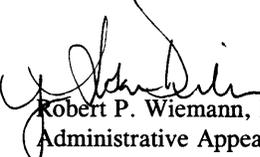
INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of chemical frits, stains and pigments. It has 92 employees and a gross annual income of \$12,300,000. It seeks to temporarily employ the beneficiary as a technical service manager for its container glass product line for a period of three years. The director determined that the petitioner had not established that the beneficiary was qualified to perform the duties of the proffered position.

On appeal, counsel asserts that the beneficiary is qualified to perform the duties of the position based on the three evaluations of his work experience previously submitted for the record. In support of the instant petition, counsel submits a copy of a previous AAO decision.

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:

- (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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 of 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. For purposes of determining

equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. 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 occupation;

(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.

With regard to the definition of recognized authority, 8 C.F.R. § 214.2(h)(4)(ii) states the following:

Re[c]ognized authority means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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.

The issue in this proceeding is whether the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position. In the original petition received by the Nebraska Service Center on April 12, 2002, the petitioner stated in its cover letter that it was submitting the beneficiary's experience equivalency report and resume evidencing his expertise in the field. No resume was submitted for the beneficiary, but the petitioner did provide a report prepared by HR Analytical Services, Greenfield, Wisconsin.

In this document, David H. Mihalyi, director of evaluations, examined both the educational credentials and the work experiences of the beneficiary prior to addressing the equivalency of the beneficiary's education and work experience to a baccalaureate degree in a specific specialty from an accredited United States educational institution.

Although Mr. Mihalyi cited to the beneficiary's educational credentials, including his diploma from a high school affiliated with the National Autonomous University of Mexico and to employment verification letters, these documents were not submitted with the original petition. In discussing the beneficiary's work history, Mr. Mihalyi stated that the beneficiary had acquired 12 years of post-university experience in chemical technology and analysis, including positions with supervisory responsibilities in addition to his professional responsibilities. Mr. Mihalyi identified the beneficiary's length of work experience as follows:

<u>Company</u>	<u>Duration</u>
Ferro de Mexico	09/89 through 04/92 (32 months)
Degussa de Mexico	05/92 through 04/93 (12 months)
Cerdec de Mexico	05/93 through 09/01 (100 months)

Mr. Mihalyi then stated that the beneficiary acquired a total of 144 months of progressive work experience "in administration and management". Mr. Mihalyi then found the 144 months to be equivalent to 128 university semester credits. Mr. Mihalyi concluded his evaluation report by stating that the 128 credits were within the range of 120 to 128 credits required for a baccalaureate degree at an accredited university in the United States.

The only other document submitted in the original petition with regard to the beneficiary's education and work experience was a letter from Timothy S. Thompson, who identified himself as the senior admissions officer for international graduate professional admissions, University of Pittsburgh. Mr. Thompson stated that, based on his review of the beneficiary's employment history, it was his judgment that the beneficiary had attained the training and education that an individual would acquire by completing a bachelor's degree in chemistry at a regionally accredited institution of higher education in the United States.

On April 16, 2002, the director requested further evidence with regard to how the beneficiary's work experience established that the beneficiary possessed the equivalent of a baccalaureate degree in chemistry. The director did not find Mr. Thompson's statement persuasive with regard to the beneficiary's qualifications and cited to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) to provide further guidance to the petitioner on how to address the issue of the beneficiary's qualifications through additional documentary evidence.

On June 13, 2002, the petitioner submitted the following documentary evidence with regard to the beneficiary's qualifications for the proffered position:

A) A letter from Jaime Garcia Castillo, one of the beneficiary's former supervisors. According to Mr. Garcia Castillo, he supervised the beneficiary at the Ferro de Mexico company from September 1989 to April 1992; at the Degussa de Mexico company from May 1992 to May 1993; and at the Cerdec de Mexico company from May 1993 to December 1998.

Mr. Garcia Castillo described the beneficiary's work responsibilities during these periods of time as follows:

Color matching: [The beneficiary] made color matches for clients in the Mexico container and flat glass market in the laboratory and also, the client's factory. Most of the color matches were done in the client's factory[.] [I]n these cases, [the beneficiary] worked with the production equipment of the client to assure that the new color match was approved[.]

Problem [s]olving: [The beneficiary] was also responsible for resolving all problems with the colors supplied including problems with color tone, screen[-]printing problems, [and] firing problems. In this respect, [the beneficiary] worked closely with equipment operators, engineers, and technicians at the client's plant to resolve the problem in a very short [period of] time[.] [T]he client request[ed] the problem to be solved rapidly because they [were] losing production time[.]

Training: In the Mexican market, the supplier must provide training to the production operators. [The beneficiary] was responsible for providing this training to a specific group of customers for the container and flat glass industry. This training includes general description of the products, recommendations on how to optimize use of production equipment, how to check parameters of products such as viscosity, and how to solve the most common problems that occur during production.

Quality [c]ontrol [m]anager: In [the] Ferro de Mexico [company], [the beneficiary was the [q]uality [c]ontrol [m]anager and was responsible for making sure that each product was made according to the client's requirements. [The beneficiary] signed all quality certificates that were sent to each client. [The beneficiary] was involved in writing all procedures and documents for the ISO certification.

In [the] Degussa de Mexico and Cerdec de Mexico [companies], [the beneficiary] was also involved with the [c]omercial [sic] personnel for every new color formulation.

In [the] Cerdec of Mexico [company], [the beneficiary] was involved in planning business strategy for the container glass area. He was involved in decisions on what clients were targeted for increased business and how much laboratory time could be devoted to each client.

Mr. Garcia also noted the technical equipment that the beneficiary learned how to operate during this period of time. This equipment included screen-printing machines, color measurement equipment, such as spectrophotometers, instruments to measure the viscosity of glass enamel products, and furnace equipment.

B) A letter from Steven Kopek, the beneficiary's former supervisor, and the petitioner's present international sales manager, glass enamels division. Mr. Kopek stated that he supervised the beneficiary in his position as a technical service manager for the Central and South American glass market. Mr. Kopek stated he indirectly supervised the beneficiary from 1996 to 2000 and then directly supervised the beneficiary April 2000 to September 2001. Mr. Kopek provided a list of job duties similar to the list provided by Mr. Garcia with regard to color matching, problem solving and training. He also provided new information on other job responsibilities such as implementing new products, price and contract negotiations, raw material evaluations, interfacing with quality control groups and reporting responsibilities. Mr. Kopek also provided an expanded

list of specialized laboratory equipment utilized by the beneficiary in his work.

C) A letter from Kathleen G. Kremer, Ph.D., stated that she was a chemist and had over twenty years of industrial work experience, mostly in the coatings industry. Dr. Kremer noted that she had assisted in the evaluation of candidates for employment which involved assessments of education as well as work experience qualifications. Dr. Kremer stated that she had reviewed the beneficiary's work experience credentials, the job description for the position under consideration, and the letters provided by the beneficiary's former supervisors that described the beneficiary's more than twelve years of industrial experience. Her conclusion with regard to the beneficiary's qualifications was that a person who worked in a United States-based chemical industry and who performed job functions similar to the beneficiary's job duties would usually be required to have at least a baccalaureate degree plus years of practical experience.

D) A letter from Annette W. Goebel, who identified herself as a chemical engineer with a bachelor of science degree in chemical engineering and with more than 16 years of product development, quality systems, manufacturing, and supplier development experience. Ms. Goebel stated that she had reviewed resumes and acted as a job interviewer for numerous professional positions. Ms. Goebel also stated that she reviewed the beneficiary's credentials and the letters written by his former supervisors prior to offering her opinion on the beneficiary's qualifications for the proffered position. Based on this review, Ms. Goebel offered an opinion that the beneficiary had the same knowledge and training as persons that she knew who had a U.S. degree in chemistry.

E) A letter from William A. Osterndorf, president, HR Analytical Services. As evidence that the beneficiary has worked with peers, supervisors or subordinates who have a degree or its equivalent in the specialty occupation, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), Mr. Osterndorf stated that Mr. Garcia Castillo, one of the beneficiary's former supervisors, received his bachelor's degree in industrial engineering in 1984, while Mr. Kopek, the other supervisor, received a bachelor's degree in ceramic engineering in 1973. Mr. Osterndorf provided no additional documentation to substantiate this assertion.

The petitioner also submitted the six untranslated documents with regard to the beneficiary's education and training in Mexico.

On July 2, 2002, the director denied the petition. The director noted that the high school transcripts submitted by the petitioner established that the beneficiary had not completed any coursework in the field of chemistry. The director determined that the letter submitted by Mr. Garcia Castillo did not provide any detailed

factual explanation of the progression of skills and knowledge obtained by the beneficiary through his employment of over ten years. In addition, the director determined that the letter from Mr. Kopek listed a number of technical duties and specialized laboratory equipment used by the beneficiary; however, the letter did not indicate how and when the beneficiary acquired his knowledge and skills in utilizing the listed laboratory equipment.

With regard to both letters, the director stated that the record did not establish that the beneficiary had worked with any peers, supervisors, or subordinates who had a degree or its equivalent in the field of chemistry while learning and performing the duties. In sum, the director determined that the petitioner had not established that the training and/or work experience of the beneficiary met the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) misapplied the standard for evaluating the equivalency of work experience in lieu of a baccalaureate degree. Counsel states that three evaluators determined that the beneficiary had over twelve years of progressively responsible experience and that this experience was held by the evaluators to meet the standard of a U.S. bachelor of science degree in chemistry.

In addition, counsel asserts that CIS did not give due weight to the evaluation provided by Mr. Thompson of the University of Pittsburgh and questions whether CIS inappropriately substituted its judgment for the experience of the two other evaluators who both have significant experience and training in the field.

Counsel finally states that the director ignored well-established standards of review as found in case law and previous AAO decisions. Counsel cites to *Matter of Caron International*, 19 I&N Dec. 791 (1988) and also provides a copy of another AAO decision dated August 25, 1999, in which the beneficiary did not have a degree. Counsel states that although the AAO dismissed the appeal, the AAO's mention of "an evaluation of the beneficiary's education by a credentials evaluation service or academic expert," illustrates the kind of evidence that CIS seeks to establish educational evaluations.

It should be noted that the petitioner did not submit certified translations for the Spanish language documents submitted for the record. 8 C.F.R. 103.2(b)(3). These documents are given no weight in the present proceedings.

Upon a review of the record, the petitioner submitted an educational equivalency document from HR Analytical Services that evaluated both the beneficiary's high school and secondary school studies and his work experience in reaching a conclusion that the beneficiary had the equivalent of a U.S. bachelor's degree in chemistry. It is noted that both HR Analytical Services and Mr.

Thompson, of the University of Pittsburgh appear qualified to evaluate the foreign academic studies of individuals as to their equivalency to similar academic coursework in the United States. Therefore, their evaluation of the beneficiary's secondary and high school education is valid.

Nevertheless, with regard to the regulatory criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), neither HR Analytical Services nor Mr. Thompson appear to have the 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. If Mr. Thompson has been given this authority by the University of Pittsburgh, a letter to this effect on the university's letterhead would provide more dispositive evidence than his present letter. Without more persuasive evidence, the criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) can not be met.

In addition, the regulatory criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) is used only to evaluate the education of the beneficiary, not his work experiences. (Emphasis added.) As stated previously by the petitioner and the director, the beneficiary has no university studies to be evaluated for equivalency to the required baccalaureate degree in chemistry. Furthermore, the petitioner has provided no further evidence with regard to any on-the-job training, post-secondary vocational training, or any university level coursework that the beneficiary has attended during his employment in the glass coating industry. Therefore the petitioner has also not established the criterion outlined in C.F.R. § 214.2(h)(4)(iii)(D)(3). Upon a review of the materials placed on the record for the instant petition, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is the only regulatory criterion relevant to the evaluation of the beneficiary's work experience and its equivalency to a baccalaureate degree.

With regard to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i), the petitioner submitted letters from two United States chemists who work in the field of chemical engineering and industrial engineering. These two individuals base their ability to evaluate the beneficiary's work experience on their previous work evaluating resumes and conducting interviews of potential employees for their companies. The experts primarily based their analysis on the information contained in the two letters provided by the beneficiary's former supervisors. As a result, the relevancy of their analysis of the beneficiary's qualifications is based on the relevancy and sufficiency of the information provided by the two supervisors. However, the letters provided by the two supervisors are problematic. As a result, the opinions offered by the two experts are not found sufficient to establish 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i).

For example, both letters from the two supervisors provide time

periods in which they supervised the beneficiary, but the letters do not provide a framework of job titles and job responsibilities that would document a series of progressively responsible work duties. The job duties listed by the first supervisor are reiterated by the second supervisor, although Mr. Kopek identifies new duties of price and contract negotiation, raw material evaluation, interface with quality control groups and creation of service call reports. Some of these new duties do not necessarily indicate baccalaureate level work or work within the professional ambit of a chemist.

With regard to progressively responsible work experience, although Mr. Garcia Castillo stated that the beneficiary functioned as quality control manager in his first job with the Ferro de Mexico company, there is no further information as to how long the beneficiary performed this work, if he supervised any other employees, the academic credentials of these employees, and any training in quality control of glass coatings manufacture that the beneficiary received prior to taking on this work assignment. There is also no evidence on the record that establishes any progression from the beneficiary's initial job with the Ferro de Mexico company to a more senior level either within this company or another Mexican company.

In addition, although Mr. Kopek, the beneficiary's second supervisor, mentions that he supervised the beneficiary while he was a technical service manager for Central and South America, the record is not clear as to how long the beneficiary held this title, the level of seniority or responsibility this title signified, how many employees he supervised, if any, and what their academic credentials were. It is also unclear how much time the beneficiary spent in the more complicated chemical analysis or monitoring of colors as opposed to troubleshooting production problems or contract negotiations during this period of time.

The supervisors also do not identify any on-the-job training or offsite training that would establish how the beneficiary obtained his expertise in color matching or in the utilization of specialized equipment. Although the initial evaluator from HR Analytical Services and Dr. Kremer both mention post university training or certificates of industrial based training, as previously mentioned, the untranslated documents submitted by the petitioner with regard to these training session are given no weight in this proceeding. Thus, there is no evidence in the record of any coursework or on-the-job training that the beneficiary took in the area of his primary work experience, namely, color matching, and chemical analysis of glass coatings.

With regard to evidence as to any significant contributions that the beneficiary may have made in his field, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(v), the petitioner provided no such documentation. The petitioner cited to *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988) in the materials placed

in the record. *Matter of Caron* does illustrate the type of work responsibilities and activities that have been found sufficient to establish that the beneficiary, without a baccalaureate degree, had made significant contributions in his field. However, the materials on the record for the instant petition are not analogous to those described in *Matter of Caron* and do not establish that the beneficiary has received any recognition of expertise in his field or made significant contributions to his field.

With regard to establishing that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation, the petitioner submitted a letter from the president of HR Analytical Services that stated that the beneficiary's two supervisors had baccalaureate degrees in either industrial or chemical engineering. The petitioner provided no further documentation of these credentials. 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). Copies of the diplomas of the two supervisors would have provided more probative weight to this element.

In sum, the petitioner has not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D). Accordingly, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.