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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

[Redacted]

File: SRC-02-167-51989

Office: TEXAS SERVICE CENTER

Date: OCT 16 2003

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]

PUBLIC COPY

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a provider of physical therapy and general rehabilitation services. It has eight employees and a gross annual income of \$300,000. It seeks to employ the beneficiary as a financial/accounts coordinator for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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), provides, in part, for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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.

The director denied the petition because the petitioner had not demonstrated that the beneficiary's educational background and work experience are the equivalent of a baccalaureate degree in a field related to the proffered position. On appeal, counsel states, in part, that the record contains a credentials evaluation from Dr. [REDACTED] from Mercy College of Dobbs Ferry, N.Y., as evidence that the beneficiary is qualified to perform the duties of the proffered position. Counsel submits evidence that Dr. [REDACTED] is authorized to make such a determination.

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), 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)

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

- (4)
- (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

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.

The record contains the following:

- Letter dated May 23, 2002, from [REDACTED] Chairperson, Division of Business & Accounting, Mercy College, at Dobbs Ferry, NY, who concludes as follows: "(1) that the Division of Business and Accounting at Mercy College has programs which award credit based upon professional experience; (2) that professors, including Professor [REDACTED] evaluate such

credentials and determine whether Mercy College is to award credit based upon the student's professional experience; and (3) that Professor Jelen is highly proficient and knowledgeable in this process."

- Evaluation dated May 22, 2002, from Dr. [REDACTED] Assistant Professor of Business Administration, Mercy College, at Dobbs Ferry, NY, who concludes that, based upon the beneficiary's coursework at a Colombian university and more than thirty years of work experience and professional training in business administration, the beneficiary holds the equivalent of a Bachelor of Business Administration Degree with a concentration in Financial management from an accredited institution of higher education in the United States;
- Letter dated June 17, 2002, from [REDACTED] Managing Director, Evaluations and Research, at Morningside Evaluations and Consulting, who states, in part, that Professor [REDACTED] of Mercy College is authorized to determine whether Mercy College is to award credit based upon a student's professional experience in a program that awards credit based upon professional experience;
- Evaluation dated May 22, 2002, from Dr. [REDACTED] of Queens College of the City University of New York, who states, in part, that, based on the beneficiary's coursework and more than thirty years of work experience and professional training in Business Administration, the beneficiary has attained the equivalent of a Bachelor of Business Administration Degree with a concentration in Financial Management from an accredited institution of higher education in the United States;
- Evaluation dated April 30, 2002, from Mr. [REDACTED] of e-ValReports, at Mukilteo, WA, who concludes that the beneficiary holds the equivalent of a bachelor's degree in business with a concentration in financial management; and
- Evaluation dated May 22, 2002, from Dr. [REDACTED] Professor of Accounting & Operations Management, at the New York University's [REDACTED] N. Stern School of Business, who states that, based on the beneficiary's academic coursework and more than thirty years of employment experience and professional training in Business Administration, the beneficiary holds the equivalent of a Bachelor of Business Administration Degree with a concentration in Financial Management from an accredited institution of higher education in the United States.

The beneficiary holds a diploma in sociology conferred by a Colombian institution. The beneficiary's educational background has been found by a credentials evaluation service to be equivalent to a baccalaureate degree in sociology from an accredited university in the United States. As the proffered position is not related to sociology, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position based on education alone.

The record indicates that the beneficiary had more than thirty years of employment experience at the time of the filing of the petition, more than ten years of which she worked in the position of financial assistant manager at an auto parts business in Medellin, Colombia. In an undated letter, the manager of the Colombian business, Pelaez Hermanos S.A. describes the beneficiary's duties as follows:

1. In charge of interpreting financial and accounting concepts for the company's improvement in the area of control.
2. Conducted financial analysis of our company's operation and submitted recommendations regarding procedures, control, and correction to the company's financial management office.
3. In charge of analysis of governmental financial policies and their impact on our company's activities.
4. Analyzed regional financial trends in order to devise and implement financial strategies.
5. Supervised the preparation of operational budgets for the company's various departments and their inter-relation with the company's general budget.
6. Directed the preparation of the company's financial reports mainly related to investments financial gains, taxes, and investment risks.

The record contains evaluations from Dr. [REDACTED], Dr. [REDACTED], Mr. [REDACTED] and Dr. [REDACTED].

The AAO uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be

rejected or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Here, the evaluations of the beneficiary's foreign credentials are based on education and employment experience. The only information provided as evidence of the beneficiary's employment experience, however, were the beneficiary's resume and the aforementioned letter from the manager of [REDACTED] S.A., Mr. [REDACTED]

Although Mr. [REDACTED] provides a description of the beneficiary's duties, he does not provide pertinent information regarding his auto parts business in Medellin, Colombia, such as the number of its employees or whether the beneficiary's experience was gained while working with peers, supervisors, or subordinates who held a degree or an equivalent in the specialty occupation. Furthermore, with the exception of Dr. [REDACTED] the record does not establish that the evaluators are officials who 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, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

In a letter dated November 7, 2001, [REDACTED] Assistant Vice President and Special Counsel to the President of Queens College, The City University of New York, states, in part, as follows:

While the Office of Undergraduate Admissions consults with faculty in the same academic discipline as the course(s) being evaluated, no individual faculty member has authority to grant credit for academic course work completed at another institution of higher education.

Moreover, the only college credit that may be given at Queens College for prior work experience and training is that determined to be its equivalent by the Adult Collegiate Education (ACE) Program after a very specific process of portfolio review. It is the ACE Program, not an individual faculty member, which has the authority to grant credit.

In view of the foregoing, the evaluations are accorded little weight.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. The record contains no evidence that the beneficiary

holds a state license, registration, or certification that authorizes her to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the proffered position is a specialty occupation. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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 decision of the director will not be disturbed.

ORDER: The appeal is dismissed.