

**D2**

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

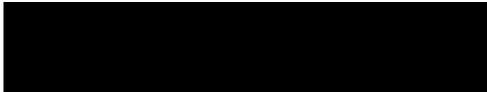
**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



File: SRC-02-068-50684 Office: TEXAS SERVICE CENTER Date:

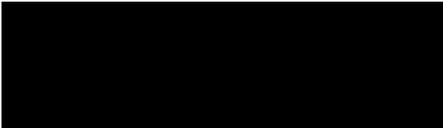
IN RE: Petitioner:  
Beneficiary:



OCT 17 2003

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:



**PUBLIC COPY**

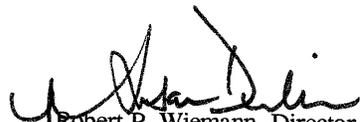
INSTRUCTIONS:

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 an entertainment and videography service with 41 employees and a gross annual income of \$431,000. It seeks to employ the beneficiary as a production manager 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 holds the equivalent of a baccalaureate degree. On appeal, counsel states, in part, that the record contains an education evaluation from Roger Cooper, Associate Professor and Chair of the Department of Radio, TV and Film at Texas Christian University (TCU) in support of his claim that the beneficiary's educational background is the equivalent of a Bachelor of Science degree in Radio-TV-Film.

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:

- (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 documentation related to the beneficiary's educational, training, and employment experiences:

- Statement of Results for the beneficiary's video technology studies in a technical institute in South Africa;
- Evaluation report from a credentials evaluation service concluding, in part, that the beneficiary holds the equivalent of two years of university-level credit in video production from an accredited community college in the United States;
- Letter dated March 21, 2001, from Nizel De Witt, who states that the beneficiary worked for Greater Durban Television as a freelance camera operator and editor from January 1995 to December 1995;
- Letter dated March 21, 2001, from Nizel De Witt, who states that the beneficiary worked for Big Concerts in Durban, South Africa, as a freelance rigger, de-rigger, and followspotter from January 1996 to December 1996;
- Letter dated March 28, 2001, from Joleen Van Vuuren, who states that the beneficiary worked for Airtime & MNet as a freelancer, participating in outside broadcasts of live sport games, and in rigging and de-rigging equipment from January 1997 to December 1997;
- Letter dated March 21, 2001, from Nizel De Witt, who states that the beneficiary worked for Video Workshop in Durban, South Africa, as a freelancer promoting

Panasonic video and photographic equipment from January 1998 to December 1998;

- Letter dated March 28, 2002, from the director of Mercury Pictures in Johannesburg, South Africa, who states, in part, that the beneficiary worked as a freelance production assistant on the British American Tobacco Competitive Edge Series from January 1999 to April 1999;
- Letter dated March 27, 2002, from Gina Sas-Kropiwnicka confirming that the beneficiary worked for Africa Sun Video Productions as an editor, camera operator, and general manager from May 1999 to December 1999;
- Undated letter from Gowrie Dairies confirming that the beneficiary was employed as an "Administration Manageress" from January 1992 to December 1994, with the following duties: "general bookkeeping, debtors, creditors, paying salaries, overseeing all administration and production staff, arranging my appointments and travel bookings. . . ."; and
- Letter dated December 6, 2001, from Roger Cooper, Associate Professor and Chair of the Department of Radio-TV-Film at TCU, who states, in part, as follows: Based on the information provided to me by [the beneficiary], she has five years of professional experience in addition to her diploma in Video Technology at Technikon Natal.

The beneficiary holds a technical degree in video technology. A credentials evaluator has determined that the beneficiary's degree is the equivalent of two years of university-level credit in video production from an accredited community college in the United States. Accordingly, it is concluded that the petitioner has not shown that the beneficiary qualifies to perform the duties of a specialty occupation based upon education alone.

The record indicates that the beneficiary had approximately five years of employment experience related to video technology at the time of the filing of the petition. Professor Cooper has determined that the beneficiary's educational background and employment experience are equivalent to a bachelor's degree in Radio-TV-Film from TCU.

Citizenship and Immigration Services (CIS) 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 evaluation of the beneficiary's foreign credentials is based on employment experience and educational background. The comments by Professor Cooper are noted. The record, however, does not contain any evidence that Professor Cooper is 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, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Furthermore, Professor Cooper bases his evaluation, in part, on the employment letters that are listed above. The majority of these letters, however, are not written on letterhead, nor do the writers identify their titles or their authority for writing such letters. In addition, the petitioner has not persuasively established that the beneficiary's duties that are mentioned in these letters, such as promoting photographic and video equipment, are those of a specialty occupation. In view of the foregoing, the evaluation from Professor Cooper is 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 petitioner has not demonstrated 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.

**ORDER:** The appeal is dismissed.