

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, DC 20536

[REDACTED]

FILE: WAC-02-029-53119 OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 29 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)

IN BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

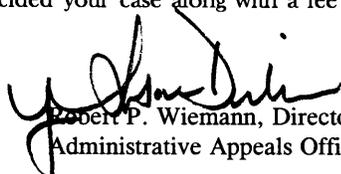
INSTRUCTIONS:

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, California Service Center, and the matter is now before the Administrative Appeals Office. The appeal will be dismissed.

The petitioner is a distributor of medical equipment that employs 50 persons and has a gross annual income of \$6 million. It seeks to employ the beneficiary as an accountant. The director denied the petition because inconsistencies in the petitioner's record showed that the beneficiary was not clearly eligible for the specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel asserts that there are no inconsistencies in the record, and that the letter from University of St. La Salle resolves any perceived inconsistencies.

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 for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(2) of 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.

In the initial I-129 petition, the petitioner submitted, among other items, the following documents: a copy of the beneficiary's degree from La Salle College, Bacolod City, Philippines; a copy of her transcript of records from La Salle College; and a certificate of employment from the Agricultural Corporation, Philippines.

On December 3, 2001, the director requested the following: the beneficiary's original degree and original transcripts from the La Salle College, evidence of the name(s) by which the beneficiary is known, and evidence of the beneficiary's current immigration status.

In response, the petitioner submitted the original transcript of records from La Salle College, Philippines; the original degree from the University of St. La Salle, Philippines; a copy of the certificate of live birth; and a copy of a joint affidavit.

On July 2, 2002, the director denied the petition, finding that, although the original of the school transcript appeared to be identical to the photocopy that the petitioner provided as initial evidence, the original diploma was clearly not the same as the copy of the diploma that the petitioner submitted as initial evidence. Citing *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), the director stated that, even though the school transcript appeared to be valid, the obvious inconsistencies in the record concerning the diploma from La Salle College casted considerable doubt on the credibility of the transcript and other support documentation in the record. Thus, the beneficiary was not clearly eligible for classification as an alien employed in a specialty occupation.

On appeal, counsel claims that there are no inconsistencies in the record. Counsel asserts that the petitioner had submitted two original degrees: in response to the director's request for evidence of the original diploma, the petitioner had submitted the original degree from the University of St. La Salle; and along with this appeal, the petitioner is submitting the second original diploma from La Salle College. Further, counsel states that the

letter from the University of St. La Salle clarifies why there are two original diplomas and resolves the inconsistent dates shown on the two diplomas. Counsel concludes by stating that the inconsistencies in this record were based on the fact that La Salle College has since been elevated to university status and now carries the name of University of St. La Salle.

Counsel's assertions on appeal are not persuasive. The evidence of record in this proceeding contains inconsistencies that the petitioner has failed to resolve by independent objective evidence.

The inconsistencies in the record of this proceeding arise from and relate to the two original diplomas. One diploma, granted to Elena S. Solas on March 25, 1979, is from the University of St. La Salle, Bacolod City, Philippines. The other, granted to Elena S. Solas on March 24, 1979, is from La Salle College, Bacolod City, Philippines. Counsel states that the letter from the University of St. La Salle resolves the inconsistencies in the two diplomas. However, upon careful examination of the record, the letter fails to resolve these inconsistencies. The letter from the University of St. La Salle, issued on August 2, 2002 and signed by the university registrar, certifies that Maria Elena S. Solas graduated from La Salle College on March 24, 1979. However, the record shows that the two original diplomas were granted to Elena S. Solas, not to Maria Elena S. Solas. Thus, the letter fails to clarify and resolve the inconsistencies in the record arising from and relating to the original diplomas.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho, Supra.*

Based upon the evidence of record in this proceeding, the petitioner has failed to resolve the inconsistencies.

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.