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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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SEP 10 2003

File: SRC-02-170-52562 Office: TEXAS 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 the Bureau of Citizenship and Immigration Services (Bureau) 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
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 import and export trading business with two employees and an undisclosed gross annual income. It seeks to employ the beneficiary as an operations 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 two evaluations as evidence that the beneficiary holds the equivalent of a baccalaureate degree. Counsel submits additional evidence to demonstrate that the evaluators have the authority to grant college-level credit, and that the colleges or universities have programs for granting such credits.

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:

- Transcript and translation of the beneficiary's coursework at a Brazilian institution, indicating that he was in "the 3rd phase in the Administration Course";
- Various letters of employment reflecting the beneficiary's ten years of foreign work experience;
- Evaluation from Dr. Gerald L. Itzkowitz of Morningside Evaluations and Consulting, who concludes that the beneficiary "has attained the academic equivalent of a Bachelor of Business Administration, from an accredited institution of higher education in Brazil";
- Evaluation from Dr. Bala Balachandran of New York University, who concludes that the beneficiary "has attained the academic equivalent of a Bachelor of Arts Degree in Management, from an accredited institution in the United States";
- Evaluation from Dr. Jonatan Jelen of Baruch College, who concludes that the beneficiary "has attained the academic equivalent of a Bachelor of Arts Degree in Management, from an accredited institution of higher education in the United States";
- Letter dated June 18, 2002, from the chairman and professor of Queens College, who states, in part, that Professor Itzkowitz is in a position to evaluate whether the college

should award credits to foreign students based upon their academic and professional experience; and

- Letter dated May 23, 2002, from the chairperson of the division of business & accounting of Mercy College, who states, in part, that "Professor Jelen is experienced in evaluating the business-related work experience of foreign students, determining their academic equivalence, and authorizing that credit be awarded by Mercy College, an accredited institution of higher learning in the United States."

In its May 1, 2002 cover letter, the petitioner's president states that the proffered position of operations manager requires a bachelor's degree in business administration or an equivalent thereof. Although the beneficiary was in the third phase of an administration course at a Brazilian institution, he does not hold a baccalaureate degree in any field of study. 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 ten years of employment experience at the time of the filing of the petition. Dr. Itzkowitz has determined that the beneficiary's educational background and employment experience are equivalent to a bachelor's degree in business administration awarded by an accredited institution of higher education in Brazil. It is noted that he does not specify the U.S. equivalent. In contrast to Dr. Itzkowitz's finding, Dr. Jelen and Dr. Balachandran conclude that the beneficiary's educational background and experience are equivalent to a Bachelor of Arts degree in management awarded by an accredited institution of higher learning in the United States.

This Bureau 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 employment experience and educational background. The record, however, contains no explanation as to why the conclusions of the evaluators differ, or why Dr. Itzkowitz did not specify the U.S. degree equivalent. Furthermore, in his June 18, 2002 letter, the chairman and professor of Queens College does not specifically state that Dr. Itzkowitz 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, despite the assertion by Dr. Itzkowitz in his April 11, 2002 evaluation that he does have such credit-granting authority, in a letter dated November 7, 2001, the assistant vice president and special counsel to the president of Queens College states, in part, as follows:

Contrary to his statement, Dr. Itzkowitz does not have the authority to grant college-level credit at Queens College of The City University of New York. The Office of Undergraduate Admissions determines whether or not to give credit to students for college-level courses taken at another college/university, domestic or foreign. 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. (Emphasis in original.)

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*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 him 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.