U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

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FILE: SRC 02 274 51844 Office: TEXAS SERVICE CENTER Date: MAR 0 2 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a renowned thoroughbred horse farm in the heart of Kentucky bluegrass country that is a premier facility for breeding, boarding, breaking, training, and racing thoroughbred horses. The record indicates that the beneficiary has resided in the United States since August 10, 2001 in an H-1B nonimmigrant classification status, pursuant to 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). This is a change-of-employment petition that endeavors to continue the beneficiary's H-1B status as a nonimmigrant worker in a specialty occupation so that the petitioner may employ her as an equine scientist.[1]

The director denied the petition on the basis that the evidence of record did not establish that the beneficiary is qualified to perform the duties of a specialty occupation.[2]

On appeal, counsel submits a brief and both new and previously submitted documentary evidence. Counsel contends that, in denying the petition, the director abused his discretion and denied the petitioner due process by not considering and not discussing substantive evidence in the record that establishes that the beneficiary is qualified to serve in the proffered specialty occupation position in accordance with the Act and its implementing regulations.

In reaching its decision here, the AAO has considered the entire record in this proceeding, which includes: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the RFE, with its additional documentary evidence; (4) the director's denial letter; (5) the Form I-290B, counsel's brief, and its attached documents; and the February 25, 2004 letter from the [redacted] Associate Dean for Academic Affairs of the University of Georgia's College of Agricultural & Environmental Sciences. The AAO carefully evaluated all of the evidence. The AAO focused especially on the following documentary evidence that is particularly relevant to the beneficiary qualification issue:

1. The Form I-129's continuation-sheet information on the beneficiary's present occupation and prior work history;

2. The September 20, 2002 and May 27, 2003 iterations of the evaluation of the beneficiary's education and work experience by Express Evaluations, Inc. (EEI).

3. The beneficiary's certificate of completion of the 1992 Diploma Course at the National Stud equine school in Great Britain;

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[1] According to the Form I-129, the beneficiary is presently employed, in H-1B status, as Yearling Manager at Crestwood Farm.

[2] Although the decision stated that the petitioner failed to satisfy any of the specialty occupation provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A), it is clear from the entire tenor of the decision that the evidence of record failed to establish that the beneficiary was qualified to serve in a specialty occupation in accordance with the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(C).

4. The March 9, 2000 letter from the Chief Executive of the National Stud equine school, which describes the beneficiary's studies there.

5. The letters about the beneficiary's work experience from these former employers: (a) Old Mill Stud, Ltd.; (b) [redacted] (c) [redacted] (d) [redacted] (e) [redacted] and (f) [redacted]

6. The May 16, 2003 letter from Ms. [redacted] about the beneficiary's training at the petitioner's horse farm as a J-1 Exchange Visitor and H-3 International Equine Management Trainee;

7. The June 4, 2003 two-page letter from the education manager at the National Stud, which details the subject matter that the beneficiary studied there;

8. The December 4, 2003 letter from Professor [redacted] Professor of Animal and Dairy Science at the University of Georgia, in which he evaluated the beneficiary's education, training, and experience;

9. The September 18, 2002 letter in support of the petition from the petitioner's farm manager;

10. The May 9, 2003 letter from the petitioner's owner, which, in part, vouches for the beneficiary's ability to perform the duties of the proffered position; and

11. [redacted] letter, which corroborates Professor [redacted] assertion of authority to grant academic credit for work experience as well as education.

The AAO notes that counsel is correct in his assertion that the director's decision overlooked the letters from the following employers, which appear behind the EEI evaluation at Tab 8 of the reply to the RFE: (1) Old Mill Stud , Ltd. (May 15, 2003); (2) [redacted] (October 14, 1993); (3) [redacted] May 14, 2003); (4) [redacted] May 22, 2003); (5) [redacted] (May 22, 2003); and (6) [redacted] (May 15, 2003). Counsel also correctly notes that the decision also overlooked Ms. [redacted] May 16, 2003 letter about the beneficiary's training – not employment - at the petitioner's horse farm.

Upon review of the record, it is not evident to the AAO that, as counsel contends, the director acted with deliberate and blatant disregard of the evidence, or that the officer "was bent upon denying the petition in question, regardless of the evidence of the petitioner sent in support of this case." On the face of the record, it is as likely as not that the letters were inadvertently overlooked. The AAO will make no further comment on this issue, as it is not within the AAO's jurisdiction to decide whether actions by CIS officers were deliberate or unintentional.

However, in its deliberations on this and all proceedings before it, the AAO makes an independent determination that is based on its own, independent review and analysis of the evidence of record. The AAO is not bound by and does not defer to the factual or legal analysis, reasoning, evidentiary considerations, findings, conclusions, or adjudicative decisions of service directors or their adjudicating officers.

Upon review of the entire record, including all the matters submitted on appeal, the AAO has determined that the evidence of record establishes that the beneficiary is qualified to serve in a specialty occupation within the meaning of the Act and its implementing regulations. As discussed below, the AAO based its decision upon two documents submitted on appeal, namely, the letters from Professor [redacted] and [redacted]

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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an 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.

The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) 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 or 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.

Obviously, only sections *1*, *3*, and *5* are relevant to the evidence of record. Section *1* will be discussed as the decisive provision under which the beneficiary's qualification to serve in the pertinent specialty occupation has been established. Section *5* will not be addressed, as there was no need to apply its analysis. However, a brief comment about the merits of the evidence relevant to section *3* is in order.

The AAO partially discounted the EEI evaluation as an educational-equivalency determination under section *3*. This is because section *3* accepts determinations of evaluation services specializing in evaluating foreign educational credentials only if the determinations are based on education alone: "An evaluation of *education* by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." (Italics added.) Where an evaluation is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Therefore, the AAO accepted the EEI evaluation only to the extent that is was based on the beneficiary's foreign education. Accordingly, the AAO accepted the EEI evaluation that the beneficiary has achieved the equivalent of a U.S. associate's degree in equine science by virtue of her completion of coursework at the National Stud. This, of course, does not equate to a U.S. baccalaureate or higher degree and, therefore, does not qualify the beneficiary in accordance with the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*).

The letters from Professor [redacted] and [redacted] however, combine to qualify the beneficiary to serve in the specialty occupation under section *1*. They establish that an official authorized by an accredited college or university to grant college-level credit for training and/or experience in the pertinent specialty has determined that the beneficiary's education, training, and experience are equivalent to a bachelor's degree in the pertinent specific specialty.

Citing authority from the University of Georgia to grant college-level credit in Animal Science based on a candidate's foreign educational credentials, training, and experience, Professor [redacted] determined that the beneficiary has "attained the equivalent of a Bachelor of Science Degree in Equine Science from an accredited institution of higher education in the United States." The professor based his determination upon evidence, which is in the record, regarding the beneficiary's completion of (1) the National Stud Diploma coursework, which the professor found to be "substantially similar" to the requirements for "the completion of two years of academic studies toward a Bachelor of Science Degree in Equine Science from an accredited institution of higher education in the United States," and (2) "at least six years of bachelor's level employment experience in equine studies, and related fields."

Standing alone, the professor's letter lacked the proper evidentiary foundation for a section *1* document. The AAO will discount a faculty member's opinion as to the college-credit equivalent of training and work experience unless independent evidence, such as a letter from the appropriate dean or provost, establishes that a specific college or university authorizes the proposed expert to grant academic credit for that institution on the basis of training and work experience. This is done in the exercise of Citizenship and Immigration Services' discretion to determine the evidentiary weight of advisory opinions submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

[redacted] letter, however, corroborates Professor [redacted] authority to grant college-level academic credit on the basis of training and work experience. Dean [redacted] establishes that, while the award of college-level credits by the University of Georgia for animal science training and experience is a collaborative effort, Professor [redacted] evaluations and recommendations are, as a practical matter, conclusive.

By submitting the letters from Professor [redacted] and [redacted] counsel has established that the beneficiary is qualified to serve in the pertinent specialty occupation in accordance with the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D) (*1*). Therefore, the appeal must be sustained, and the petition will be approved.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.