U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 219 52203 Office: CALIFORNIA SERVICE CENTER Date: SEP 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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 dismissed. The petition will be denied.

The petitioner is a nuclear medicine medical group that seeks to employ the beneficiary as a nuclear chemist. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional supporting documentation.

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 record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a nuclear chemist. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in chemistry for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's transcripts for his bachelor's degree reveal that he passed his chemistry curriculum with only a "D" average, which is an insufficient grade point average by U.S. standards. On appeal, counsel states, in part, that the grading standards and scales of U.S. universities are not identical to those of foreign universities. Counsel further states that any above-50 grade is considered a passing grade, and the beneficiary's *Honours Baccalaureus Scientiae* degree is equivalent to a U.S. master's degree. In support of her claim, counsel submits a letter from Patricia Del Rey, Ed.D., Director of Educational Assessment, Inc., a company that specializes in evaluating academic credentials, and a copy of the 1994 reference guide, *Foreign Educational Credentials Required for Consideration of Admission to Universities and Colleges in the United States*, prepared by the American Association of Collegiate Registrars and Admissions Officers for the U.S. Agency for International Development, Office of International Training.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in chemistry. The AAO does not dispute counsel's statements and evidence regarding the grading standards and scales of U.S. and foreign universities. The record, however, contains unexplained inconsistencies. Although counsel asserts on appeal that the beneficiary's *Honours Baccalaureus Scientiae* degree is equivalent to a U.S. master's degree, Dr. Rey concludes in her February 28, 2002 evaluation and in her November 25, 2002 letter, that the beneficiary's *Honours Baccalaureus Scientiae* degree is equivalent to a U.S. bachelor's degree in chemistry, which warrants admission to a U.S. master's degree program. Both counsel and Dr. Rey base their conclusions on the 1994 reference guide, *Foreign Educational Credentials Required for Consideration of Admission to Universities and Colleges in the United States.* The record does not contain any explanation for the inconsistency between the conclusions of counsel and Dr. Rey. Furthermore, copies of the beneficiary's degrees from the University of the Western Cape, which were signed by the registrar and the vice-chancellor, indicate that the beneficiary's *Baccalaureus Scientiae* and *Honours Baccalaureus Scientiae* degrees were conferred on March 27, 1999 and March 29, 2001, respectively. Copies of the certified statements from the University of the Western Cape, which were signed by the registrar on October 7, 2002, however, certify that the beneficiary obtained his *Baccalaureus Scientiae* and *Honours Baccalaureus Scientiae* diploma/degrees in 1998 and 2000, respectively. Again, the record does not contain any explanation for these inconsistencies. 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*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.