

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

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



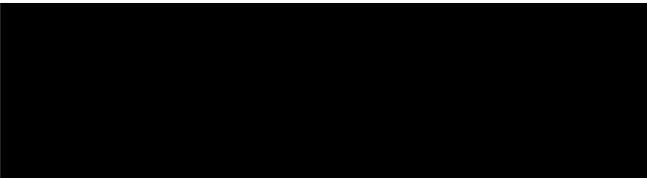
De

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 06 2005

IN RE: Petitioner: [REDACTED]
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)

ON BEHALF OF PETITIONER:



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.

for
Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California Service Center 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 plastic surgery practice, with five employees. It seeks to employ the beneficiary as its financial director. The director denied the petition because he found the beneficiary was not qualified to perform the duties of a specialty occupation.

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

The only issue before the AAO is whether the beneficiary is qualified to perform the duties of this position. In determining whether an alien is qualified to perform the duties of a specialty occupation, Citizenship and Immigration Services (CIS) looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or 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.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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 possess a U.S. or foreign baccalaureate degree required by the specialty occupation, nor does the proffered position require a license or certification. Therefore, it remains for the petitioner to establish that she is qualified to perform the duties of its proffered position on the basis of her training and/or experience under the final and fourth criterion noted above. On appeal, counsel contends that the petitioner has done exactly

that, documenting the beneficiary's 15 plus years of employment, along with the training she has received, as the equivalent of a baccalaureate degree in business administration or finance. The AAO does not agree.

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), equivalence to a U.S. baccalaureate or higher degree shall mean the 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 requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (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.

On appeal, counsel identifies a series of documents that she contends establish the beneficiary's degree equivalency -- an academic evaluation of the beneficiary's previous employment by a Mercy College professor that finds the beneficiary to have the equivalent of a degree in business administration; an evaluation from a credentials evaluation service, based on an academic evaluation prepared by a faculty member at Concordia University, that finds the beneficiary to have a degree equivalency in finance; two letters from her previous employer describing her work; and a copy of the diploma of an individual who is identified as having provided the beneficiary with on-the-job training. However, none of these materials meets the requirements set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D), as outlined in the following discussion.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), CIS accepts an education equivalency evaluation of training and/or work experience only if (1) the evaluation was rendered by an official who has authority to

grant college-level credit for training and/or experience in the pertinent specialty, and (2) the accredited college or university that authorizes the official has a program for granting college-credit for training and/or experience in the pertinent specialty.

The evaluation of the beneficiary's work experience and training provided by the Mercy College professor cannot be accepted as proof of the beneficiary's degree equivalency. It does not constitute an evaluation from an official who has the authority to grant college-level credit for training and/or experience at an accredited college or university that has a program for granting such credit. Although the professor states that he has the authority to confer college-level credit for training and/or courses taken at other universities, he does not claim to have the authority to grant college-level credit for work experience. Further, there is no evidence in the record to establish that he is affiliated with a college or university that awards academic credit for training or experience, or that the college or university has authorized him to grant such credit. As a result, the AAO will not accept this evaluation as evidence of the beneficiary's degree equivalency under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

On appeal, counsel also asserts that the evaluation provided by the Foundation for International Services, Inc. (FIS), which includes a second education equivalency assessment of the beneficiary's work history by a Concordia University professor, establishes the beneficiary's qualifications. However, the AAO discounts the evaluation provided by FIS. An evaluation service may only evaluate an alien's foreign educational credentials, not his or her work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Therefore, the FIS opinion regarding the beneficiary's work experience is not probative.

Counsel contends that the AAO has previously found an FIS evaluation of work experience to be acceptable in establishing a beneficiary's qualifications to perform the duties of a specialty occupation. While the AAO agrees that an FIS evaluation was discussed in the decision referenced by counsel, its determination regarding the beneficiary's qualifications was, in fact, based on two academic evaluations. In any event, while 8 C.F.R. § 103.3(a) provides that precedent decisions are binding on all CIS employees in the administration of the Act, unpublished opinions, such as the one cited, are not similarly binding. Furthermore, the AAO notes that CIS is not bound to approve a petition where eligibility has not been demonstrated. Each petition filing is a separate proceeding with a separate record, and CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d).

The AAO also discounts the education equivalency evaluation of the beneficiary's work history submitted in conjunction with the FIS assessment. This second evaluation, which finds the beneficiary to have the equivalent of a baccalaureate degree in finance, was prepared by a Concordia University professor who states that he has the authority to award college-level credit for training and work experience, and that Concordia University has a program that awards academic credit for experience. However, the professor does not attest that he has authority to grant college credit in finance, the pertinent specialty on which he has opined. The record includes a letter from the Dean of the College of Arts and Sciences at Concordia University stating that the university has a degree completion program which offers a limited amount of credit for training and/or experience. However, the letter does not indicate that the evaluator has been granted the authority to award academic credit for work experience in the specialty of finance. Instead, it states only that "the curriculum is administered from the office of the provost, and the faculty have responsibility for the curriculum and the

granting of credit for academic coursework and its equivalents.” Without convincing independent evidence of his authority to grant college-level credit in the pertinent specialty, the professor’s evaluation of the beneficiary’s work history cannot establish that she holds the equivalent of a U.S. baccalaureate degree in finance. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Accordingly, the AAO also finds the second academic evaluation of the beneficiary’s employment history to be insufficient to meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The AAO now turns to its own evaluation of the beneficiary’s training and employment history under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). When evaluating a beneficiary’s qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary’s training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary’s training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary’s expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

As proof of the length and nature of the beneficiary’s previous employment, the petitioner has submitted the beneficiary’s resume, two letters from the beneficiary’s employer in Brazil, and a copy of the diploma of one of the two individuals identified as having provided the beneficiary with on-the-job training and evaluation. Again, these materials are insufficient to establish the beneficiary’s employment history or her completion of a range of financial training courses.

The beneficiary’s resume does not constitute independent evidence of her work history and it is too generalized to be instructive. Further, although both the beneficiary’s resume and the beneficiary’s former employer indicate company-sponsored training courses received by the beneficiary, the record does not document that training (e.g., by training certificates, catalogues, or statements by the employer that provide informative details about each training course’s content and duration, as well as the academic degrees of the instructors). Furthermore, although submitted in support of an evaluation that the beneficiary holds the equivalent of a U.S. bachelor’s degree in finance, the former employer’s letters and associated documentation do not establish that the beneficiary worked with supervisors, peers, or subordinates that hold baccalaureate or higher degrees in finance.

Finally, the record lacks evidence of the professional recognition required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

It is also noted that the evaluations submitted by the petitioner reached inconsistent conclusions about the degree-equivalency of the beneficiary's experience, but the inconsistency is not explained. 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).

Counsel's reference to the November 13, 1995 memorandum from the Office of Examinations is not on point. As reflected in the decision above, the evaluations submitted in this proceeding are obviously erroneous, as they plainly deviate from the requirements in the relevant CIS regulations.

For reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will 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 met that burden.

ORDER: The appeal is dismissed. The petition is denied.