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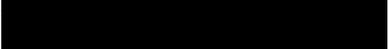
U.S. Citizenship
and Immigration
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FILE: WAC 04 046 52001 Office: CALIFORNIA SERVICE CENTER Date: **SEP 21 2005**

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:

SELF-REPRESENTED

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 director of the 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 provides a training program for riders and horses. It seeks to employ the beneficiary as an equestrian trainer/competitor. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation 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).

The director denied the petition because the beneficiary is not qualified to perform the proffered position. On appeal, the petitioner states that the beneficiary qualifies for the proffered position and submits additional evidence.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an equestrian trainer/competitor. The director concluded that the petitioner failed to establish that the beneficiary's education, training and/or work experience is equivalent to a bachelor's degree in the specialty occupation.

A review of the record reveals that the petitioner has failed to establish that the beneficiary qualifies to perform the proposed position.

The beneficiary does not hold a U.S. baccalaureate degree in a specific specialty or a foreign degree determined to be equivalent to a U.S. baccalaureate degree in equine studies as required by the specialty occupation, the petitioner must therefore 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 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; or
- (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.

No evidence satisfies the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1) or (3). The evaluations from Ms. [REDACTED] of [REDACTED] and from [REDACTED] a resident trainer at [REDACTED] Farms, are not from officials who have 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. Furthermore, these evaluations, including the one from Mr. [REDACTED] are performed by a reliable credentials evaluation service that specializes in

evaluating foreign educational credentials. Thus, this evidence fails to satisfy the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1) and (3).

No evidence satisfies the criterion under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) or (4).

Since the evidence fails to establish the first four criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(D), CIS must evaluate the job duties that the beneficiary performed pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. 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 occupation¹;
- (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.

Based on the evidence in the record, the beneficiary's training and cumulative work included the theoretical and practical application of specialized knowledge required by the specialty occupation, which in this case is equine studies; however, the evidence from [REDACTED] does not clearly indicate the length of time the beneficiary trained there and whether it was on a full or part-time basis. Thus, the evidence in the record, taking into consideration the beneficiary's completion of 45 units in business administration, is insufficient to establish the equivalent to a bachelor's degree in equine studies.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

The record contains a transcript from Las Positas College that shows that the beneficiary completed 45 units of study there, majoring in business administration. The record also contains a letter from Equestrian Club Meaker describing the beneficiary's membership there since 1992. Based on the October 14, 2003 letter from [REDACTED] the beneficiary's time spent with Equestrian Club Meaker was not equivalent to baccalaureate-level studies in equine studies. In the late summer of 1996, the beneficiary became a student at [REDACTED] where he is described as learning riding, training, competing, and the business aspects of the horse industry. According to [REDACTED] its curriculum covers animal care, stable management, body awareness for horses and people, animal behavior, and three phases of eventing – dressage, show jumping, and cross country. The August 23, 1996 letter from [REDACTED] states that the beneficiary was accepted as a student for the session beginning September 1996 through December 1996. The October 14, 2003 letter from [REDACTED] discusses the beneficiary's development over a three-year period. The May 5, 2004 letter from Ms. [REDACTED] of Goose Downs Farm states that the beneficiary's mastery of the Three Day Eventing is on par with a master's degree. Ms. [REDACTED] possesses a master's degree in education and has over 35 years as a teaching and riding professional in the sport of eventing and has been involved in the development of a national program to train and assess eventing instructors. A letter from Ms. [REDACTED] dated October 12, 2003, states that she spent five months as a resident trainer at [REDACTED] in 1997 and worked with the beneficiary giving him instruction in dressage, slow-jumping, and cross-country jumping, and having him assist in training young unschooled horses from the ground up and schooled horses which required re-training. Ms. [REDACTED] states that the beneficiary's knowledge exceeds the knowledge gained in a bachelor's degree program. As indicated earlier, the evidence from [REDACTED] does not clearly indicate the length of time the beneficiary trained there and whether it was on a full or part-time basis. Thus, the evidence from [REDACTED] fails to establish that the beneficiary's education and training is the equivalent to a bachelor's degree in equine studies.

A 1998 letter from the Mexican Olympic Committee states that the beneficiary was to participate at the North American Young Riders Championships, and a letter from the president of the Mexican Eventing Committee confirms the beneficiary's participation in this event. The record contains letters confirming the beneficiary's participation in competitions during his youth and his skill as an equestrian, and newspaper articles about the beneficiary's competitions during his youth. This evidence does not discuss the beneficiary's training or experience.

A letter dated March 31, 2004 from Mr. [REDACTED] states that, based on his observation, the beneficiary's horse and rider training activities are performed at a higher level than most college graduates from equine studies programs, and that his skills, knowledge, and experience exceed that of a bachelor's degree from most equine studies programs in the country. According to Mr. [REDACTED] the beneficiary has an intrinsic knowledge of the training of young horses, their anatomy, muscle development, and psychology. The opinions of Mr. [REDACTED] are based on his observations of the beneficiary performing volunteer activities training young horses and sharing knowledge with riders at all levels. The letter is not persuasive in establishing that the beneficiary possesses the equivalent to a bachelor's degree in equine studies as it does not discuss the beneficiary's training and experience in any detail.

The beneficiary's experience may have been gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation as Ms. [REDACTED] possesses a master's degree in education and has over 35 years as a teaching and riding professional in the sport of eventing.

The beneficiary has recognition of expertise in the specialty: Ms. [REDACTED] and has been involved in the development of a national program to train and assess eventing instructors, and Mr. [REDACTED] Jr. has extensive credentials in the equestrian field. The beneficiary also has been published regarding his accomplishments in competitions. Nevertheless, the evidence is not sufficient to establish that the beneficiary's education, training, and/or work experience is equivalent to a bachelor's degree in equine studies.

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.

Beyond the decision of the director, the proposed position does not qualify as a specialty occupation. The *Handbook* reveals that the proposed position is analogous to an animal trainer and that employers do not require a bachelor's degree in a specific specialty for this occupation. Furthermore, the petitioner's advertisement in the San Francisco Chronicle does not state the requirement of a bachelor's degree for the proposed position.

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.