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Services

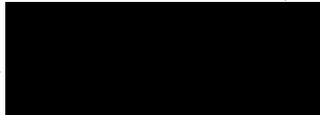
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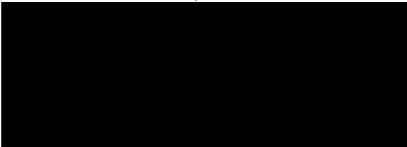
FILE: LIN 01 274 52069 Office: NEBRASKA SERVICE CENTER Date: **SEP 21 2005**

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:



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. A timely appeal was filed by the petitioner. The AAO dismissed that appeal on June 24, 2002, holding that the petitioner had failed to establish that the beneficiary was qualified to perform the duties of a specialty occupation. The petitioner filed a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5. The AAO granted the motion, affirming the prior decision of the AAO, and denied the petition. The matter is again before the AAO on motion to reopen or reconsider. The AAO grants the motion to reopen, and affirms the decisions of the AAO to deny the petition.

The petitioner is a grain and livestock firm that seeks to employ the beneficiary as a farm manager. The director denied the petition, finding that the proposed position fails to qualify as a specialty occupation and the beneficiary is not qualified to perform a specialty occupation.

On motion, counsel states that the submitted letter from Dr. [REDACTED] a professor at Ohio State University, was previously unavailable. Counsel refers to this letter, the private applicator license issued to the beneficiary by the Ohio Department of Agriculture, and previously submitted evidence to establish that the beneficiary qualifies for the proposed position. Counsel asserts that the AAO decision of February 2, 2004 concluded that the petitioner failed to establish that the beneficiary qualifies for the proposed position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), and counsel points out that the AAO decision did not discuss the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which allows CIS to determine whether a combination of education and experience, or experience alone, is equivalent to a bachelor's degree.

The AAO grants counsel's motion.

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.

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.

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 occupation<sup>1</sup>;

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<sup>1</sup> *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

- (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 evidence in the record fails to establish that the beneficiary possesses the educational equivalent to a U.S. baccalaureate degree in farm management pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The record contains certificates reflecting that the beneficiary completed studies or training, or both, at Bicton College of Agriculture, East Budleigh, in London; but the certificates do not indicate the length of the studies and/or training, and no independent evidence in the record has this information. Although letters from Dr. [REDACTED], an associate professor with the University of Tennessee Institute of Agriculture, and Dr. [REDACTED] a professor with The Ohio State University, state that the beneficiary completed two years of agricultural training in England, no independent evidence in the record corroborates their statements. The record also contains a letter from [REDACTED] an associate professor with The Ohio State University Extension, which stated that the beneficiary had completed three years of study in the United Kingdom; again, no independent evidence in the record corroborates her statement. Thus, the submitted certificates do not establish equivalence to a U.S. baccalaureate degree in farm management.

The AAO now turns to the beneficiary's prior work experience, and considers whether it included the theoretical and practical application of specialized knowledge required by the specialty. The letter from Dr. [REDACTED] dated February 24, 2004, and the July 12, 2002 letter from Dr. [REDACTED] discuss personal observations of the beneficiary during his work experience with Scoto Farms/Barnes Farms. Both Dr. [REDACTED] and Dr. [REDACTED] conclude that the beneficiary has the educational equivalent to a baccalaureate degree in farm management based on the beneficiary's two years of agricultural training in England, and 3 ½ years of U.S. internship training. However, the value of their conclusion is diminished by two documents in the record: the document from the United States Information Agency, Exchange Visitor Program Services, which is signed September 29, 2000, and states that the beneficiary's internship training in the United States was for a period not to exceed 18 months; and the letter from Scioto Farms that describes the beneficiary's 18 month internship. Thus, the conclusion drawn that is by Dr. [REDACTED] and [REDACTED] conflicts with the evidence in the record. 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

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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).

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).

Since no evidence indicates the length of studies or training that the beneficiary completed at Bicton College of Agriculture, the letter from § describing the beneficiary's responsibilities during his 18-month internship is insufficient to establish the specialized training and/or work experience that must be demonstrated for each year of college-level training that the beneficiary lacks. The AAO can only apply 18 months of internship training towards each year of college-level training that the beneficiary lacks. The beneficiary's 18 months of work experience, therefore, does not demonstrate equivalence to a bachelor's degree in farm management as three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks.

The record reflects that the beneficiary'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 beneficiary has recognition of expertise in the specialty by § who is an expert in farm management. The letter from § states that the beneficiary's work experience with Scioto Farms was gained while working with the owners/operators of Scioto Farms, and that the owners/operators have advanced degrees from Ohio State University College of Food, Agricultural, and Environmental Studies. Nonetheless, the evidentiary record reflects that the beneficiary's work experience does not demonstrate equivalence to a bachelor's degree in farm management.

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 on this ground.

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 AAO's previous decisions are affirmed. The petition is denied.