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FILE: LIN 04 800 48125 Office: NEBRASKA SERVICE CENTER Date: OCT 05 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 horse operation. It seeks to employ the beneficiary as an equine scientist. Accordingly, the petitioner 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).

On May 20, 2005, the director denied the petition determining that the record did not establish that the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel for the petitioner asserts that the director abused her discretion and violated the petitioner's right to due process, failing to consider all the evidence submitted and failing to articulate the reasoning supporting her conclusions.

The issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's January 13, 2005 request for further evidence (RFE); (3) the petitioner's April 4, 2005 statement and supporting documentation in response to the RFE; (4) the Form I-290B and documents previously submitted. The AAO reviewed the record in its entirety before issuing its decision.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) 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, the 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.

In an August 23, 2004 letter submitted in support of the petition, the petitioner listed the specific duties of the equine scientist position offered to the beneficiary as:

Study the origins, behaviors, disease histories, genetics, and conditions of valuable horses; oversee and coordinate the organization of equine operations, including breeding, training, conditioning, and rehabilitating valuable horses; develop, implement, and monitor safety, nutrition, health, and conditioning programs; us[e] principles of physiology and animal nutrition, customize training, feeding, and exercise schedules to current conditions and peculiarities of each horse; monitor growth, progress, and training success of yearlings; research and control breeding practices to improve progeny and obtain desirable traits; oversee breeding and training practices of horses to improve strength, stamina, speed, agility, temperament, maturity rate, etc.

The petitioner provided an August 29, 2002 evaluation of education and work experience authored by Express Evaluations, Inc. Express Evaluations, Inc. noted the beneficiary's certificate in Equine Studies from Telford Rural Polytechnic in New Zealand and the beneficiary's subsequent 12 years of work experience and concluded that the beneficiary's education and work experience is equivalent to a bachelor's degree in equine science and management in the United States.

On January 13, 2005, the director requested: additional evidence to establish that the proffered position qualifies as a specialty occupation; a complete, detailed description of the duties to be performed by the beneficiary; and a copy of the beneficiary's college transcripts to establish that the beneficiary has completed a specific course of education which has a direct correlation to the duties of the proffered position.

In an April 4, 2005 response, the petitioner provided a detailed description of the proffered position's duties, which the director found sufficient to establish that the proffered position as a specialty occupation. The AAO finds the duties of the proffered position to be similar to the Department of Labor's *Occupational Outlook Handbook (Handbook)* description of "animal scientist." The *Handbook* identifies the training for such scientists as:

A typical undergraduate agricultural science curriculum includes communications, mathematics, economics, business, and physical and life sciences courses, in addition to a

wide variety of technical agricultural science courses. For prospective animal scientists, these technical agricultural science courses might include animal breeding, reproductive physiology, nutrition, and meats and muscle biology.

To establish that the beneficiary is qualified to perform the duties of the proffered position, the petitioner submitted an evaluation summary from Educational Assessment, Inc. This evaluation company reviewed the beneficiary's education at Telford Rural Polytechnic in New Zealand and determined that her formal education is equivalent to one year of academic credit towards a U.S. baccalaureate degree in Equine Science or Management from an American college or university. The evaluator also referenced an assessment of the beneficiary's academic and work experience provided by [REDACTED] Director of the Equine Programs at Teikyo Post University. Ms. [REDACTED] indicated she had reviewed the beneficiary's diploma in Equine Studies with transcripts issued by Telford Rural Polytechnic in New Zealand, letters from the beneficiary's prior employers "certifying [the beneficiary's] more than 12 years of expert work in the equestrian field," the equivalency evaluation performed by Express Evaluations, Inc., and a letter from the beneficiary's prospective employer. Ms. [REDACTED] identifies herself as the Director of the Equine Program at Post University, an accredited U.S. university offering an Equine Management degree and claims that she is in a position to evaluate education and experience for college credit in this field. Ms. [REDACTED] stated that she has direct authority over the curriculum and course content and maintaining the standard of instruction in equine programs. Ms. [REDACTED] indicated, additionally, that Teikyo Post University has an experiential learning program that allows undergraduate students to receive course credit through various options. Ms. [REDACTED] determined that the beneficiary's formal education combined with her more than 12 years of experience is clearly comparable to four years of education at an American university in the field of Equine Science.

On May 20, 2005, the director denied the petition. The director noted the record contained the beneficiary's diploma from Telford Rural Polytechnic located in New Zealand with the beneficiary's transcripts from that institution; a Certificate of Achievement from Lexington Community College in Kentucky Equine Management that offers no information regarding the duration and content of the coursework; and an educational evaluation provided by Express Evaluations, Inc. The director, however, made her decision on a review of the beneficiary's work experience, determining that the beneficiary's work responsibilities for the prior 12 years were not progressively more responsible and would not prepare her for the duties as stated in the petition. The director indicated that the evidence used by the evaluator did not seem to support the claims of complexity or specialized academic knowledge and observed that the Service uses independent evaluations of a person's foreign credentials and work experience as an advisory opinion only. The director referenced the prior approval of the beneficiary in an H-1B classification but noted that the size and scope of the operation for that petition, and the complexity of the duties for that employer were not presented and thus could not be assessed. The director concluded that the petitioner had failed to establish that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel for the petitioner asserts that the adjudicator ignored the evidence submitted in response to the director's RFE, including four letters from previous employers that outlined the beneficiary's prior work experience, a comprehensive evaluation of the beneficiary's education and work experience submitted by Educational Assessment, Inc., and the petitioner's offer of employment which demonstrated that the beneficiary had received recognition as an individual with specialized knowledge. Counsel contends that the adjudicator's failure to review and discuss the submitted evidence results in a violation of the petitioner's due

process, as the petitioner has not been provided a meaningful opportunity to be heard. Counsel claims that the adjudicator violated Citizenship and Immigration Services (CIS) policy when failing to defer to a prior adjudicator's determination that the beneficiary is qualified to hold H-1B status.

Counsel's assertions are not persuasive. The petitioner has not provided evidence that the beneficiary holds a United States baccalaureate or higher degree in equine science, a foreign degree determined to be equivalent to a United States baccalaureate or higher degree, or that the state requires or that the beneficiary has an unrestricted license, registration, or certification to practice in the hospitality field. The petitioner has not established that the beneficiary is qualified to perform services in a specialty occupation pursuant to 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) through (3).

Therefore to establish the beneficiary's qualifications to perform the duties of a specialty occupation, the petitioner must prove that the beneficiary's combined education, training, and employment experience provide her with the equivalent of a baccalaureate or higher degree required by the specialty occupation. To determine eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for H-1B status based on:

- (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.

The petitioner submitted an evaluation of education and work experience by Express Evaluations, Inc., dated August 29, 2002. The record does not contain evidence, however, that the evaluator was authorized to grant credit for experience in a specialty through an accredited college or university that has a program for granting

such credit. Likewise, the evaluation of the beneficiary's training experience by [REDACTED], Director of Equine Programs at Post University, is not substantiated to be 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 that has a program for granting such credit based on an individual's training and/or work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The AAO acknowledges Ms. [REDACTED] claim that she has the authority to grant college-level credit for training and/or experience and that Post University has an experiential learning program that allows undergraduate students to receive course credit through various options. Although the AAO accepts the *bona fides* of Ms. [REDACTED] as a director of Equine Programs at Post University, the record does not contain independent evidence of the evaluator's authority to grant college-level credit; merely writing the evaluation on university/college letterhead is not enough. Rather, a letter from a dean or provost of Post University verifying both the evaluators' authority to grant college-level credit in the specialty and the existence of a program granting credit for training and/or work experience is required. Thus, as determined above, the evaluations in the record do not establish that the beneficiary has received college-level credit for her training and/or her work experience that provides her with the equivalent of a baccalaureate degree.

Neither does the record contain results of recognized college-level equivalency examinations or special credit programs or an evaluation of education by a reliable credentials evaluation service that specializes in evaluating foreign educational credentials, which shows that the beneficiary has the equivalent of a bachelor's degree. 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (3). The AAO acknowledges that both Express Evaluations, Inc. and Educational Assessment, Inc. have determined that the beneficiary's diploma from Telford Rural Polytechnic in New Zealand is equivalent to one year of academic credit towards a U.S. baccalaureate degree in Equine Science or Management from an American college or university. The AAO accepts the evaluation of the beneficiary's foreign education. However, neither Express Evaluations, Inc. nor Educational Assessment, Inc. have demonstrated authority to grant college-level credit for the beneficiary's work experience.

The record does not contain certifications or registrations from nationally-recognized professional associations or societies for the specialty that are known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty. 8 C.F.R. § 214.2(h)(4)(iii)(D)(4). The letters submitted on behalf of the beneficiary, including the petitioner's response to the director's RFE, do not establish the various employers as nationally-recognized professional associations or societies nor do the writers certify or attempt to register the beneficiary as an individual possessing a certain level of competence in the equine science specialty. Rather, the letters contain generalities regarding the beneficiary's nature and the organizations' business. For example, the letter from Belmont Farms notes the beneficiary's work experience, her love of horses, and contains a general recommendation but does not speak to the beneficiary's expertise; the letter from Pin Oak Stud confirms the beneficiary's employment and student training for seven months, and the hope that the beneficiary and others in the program had been encouraged to continue their education, but does not establish that the beneficiary gained expertise or competency in the equine science field; the letter from Brandywine Farm identifies the beneficiary as a management-level employee who has expertise in the feeding regimen for growing horses, as well as indicating the writer's belief that the beneficiary's knowledge and practical abilities were beyond those of a typical college graduate, however the record does not establish that Brandywine Farm is a nationally-recognized professional association or society that certifies or registers individuals as experts; the

letter from [REDACTED] references the beneficiary's H-1B status as an equine scientist while employed at [REDACTED] and notes the beneficiary's skills and expertise would enable her to excel at any horse operation, but again the record does not show that [REDACTED] is a nationally recognized professional association or society.

Thus, the AAO must consider whether the beneficiary's work experience coupled with her education is sufficient to establish that she is qualified to perform the duties of the specialty occupation under the regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(5). In this matter it is not. 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 three 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 authority¹ has determined to be significant contributions to the field of the specialty occupation.

The petitioner has submitted evidence that the beneficiary's diploma from Telford Rural Polytechnic in [REDACTED] is equivalent to one year of academic credit towards a U.S. baccalaureate degree in Equine Science or Management from an American college or university. However, the record does not demonstrate that the beneficiary's previous work experience is equivalent to an additional three years of college-level credit. The evaluation from [REDACTED] lists the beneficiary's previous work experience. The AAO observes that according to the information provided to Express Evaluations, Inc., the beneficiary's duties from August 1987 to April 1998 included riding at various competitions, breaking in horses, doing stable work, riding track work, preparing horses for grooming events, farm work, traveling to shows, and exercising polo ponies. The beneficiary's duties during this ten-year period demonstrate the beneficiary's experience as an animal care or service worker, but does not establish that the beneficiary's training and/or work experience 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. Thus, the majority of the beneficiary's work experience is not equivalent to college-level credit. Moreover, although the evaluator lists the beneficiary's duties, the beneficiary's claimed 12 years of work experience is not supported by adequate documentation

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 opinion, 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)(i)(C)(ii).

detailing the time period the beneficiary was employed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner has established the beneficiary's equine-related employment from April 1993 to November 1994, a period of 18 months; from April 1998 to November 1998, a period of six to seven months; and from 2002 to 2004, a period of two years. The AAO accepts that the beneficiary's work experience beginning in 1998 through 2004 included a theoretical and practical application of specialized knowledge required by the specialty occupation, however, the petitioner has not provided documentary evidence that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation² and neither has the petitioner documented recognition of the beneficiary's expertise in the specialty.³ Further, the record does not provide the exact dates of employment during this time period so that the AAO may calculate whether the beneficiary's actual work experience covers sufficient time to assess as equivalent to one or more years of college-level credit.

Thus, the record is insufficient to establish that the beneficiary's training and/or work experience includes the theoretical and practical application of specialized knowledge required by a specialty occupation; that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or degree equivalent in a specialty occupation; or that the beneficiary's "expertise" in a specialty occupation has been recognized. The record does not establish that the beneficiary's work experience is the equivalent to an additional three years of college-level credit. Accordingly, the petitioner has not established the beneficiary's qualifications to perform the duties of a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The AAO acknowledges the failure of the director to consider all the evidence submitted in support of the petition and to articulate the reasoning supporting the decision. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). However, even when considering all the evidence in the record, the petitioner fails to establish that the beneficiary is qualified to perform the duties of the specialty occupation.

The AAO further notes that CIS previously approved the beneficiary in this very same specialty occupation for a similar organization. The AAO observes that each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). This record of proceeding does not indicate whether the director reviewed the prior record and the rationale for the prior

² The record does not contain information that the beneficiary's peers, supervisors, or subordinates during the 1998-2004 time period have degrees or the equivalent in the specialty occupation.

³ The record does not contain the required documentary evidence to establish the beneficiary's previous employers, current employer, or the evaluators as recognized authorities. As the petitioner observed, the AAO is not sufficiently knowledgeable regarding the intricacies of the proffered position, thus the AAO must rely on opinions of recognized authorities in this field to assist in establishing the beneficiary's qualifications.

decision. However, if that record contained the same evidence as submitted with this petition, CIS would have erred in approving the previously filed petition. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

The AAO also notes counsel's assertion that the petitioner's right to due process was violated; however, the petitioner has not shown that the director's inarticulate reasoning resulted in "substantial prejudice" to it. See *De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The petitioner has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case, although omitting to adequately discuss the rationale supporting the conclusion. The petitioner's appeal and the AAO's above discussion adequately redress this complaint. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the regulation. Accordingly, the petitioner's claim is without merit.

The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. The petitioner has not established that the beneficiary has the requisite qualifications to perform the duties of a specialty occupation. For this reason, the petition will not be approved.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the AAO will not disturb the director's denial of the petition.

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