



U.S. Citizenship  
and Immigration  
Services

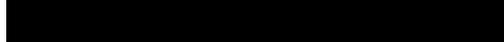
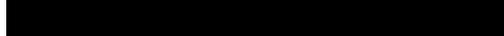
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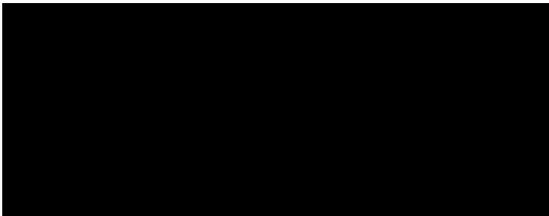
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FILE: LIN 04 254 50199 Office: NEBRASKA SERVICE CENTER Date: **SEP 06 2006**

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
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 is a cheese manufacturer that seeks to employ the beneficiary as a dairy technologist. 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 on the ground that the beneficiary is not qualified to perform the proffered position. Counsel submits a timely appeal.

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) the 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) the Form I-290B and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a dairy technologist. The petitioner asserts that the proposed position requires a bachelor's degree with a concentration in agricultural science/economics and related work experience.

The director determined that the beneficiary is not qualified for the proffered position because the beneficiary's education, experience, and training are not equivalent to a baccalaureate degree in a field that is related to the proposed position.

Upon review of the record, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position.

To establish the beneficiary's qualifications pursuant to the criteria at C.F.R. § 214.2(h)(4)(iii)(C), the record contains documentation of the beneficiary's diploma of license, transcripts, and work experience letters. The petitioner submitted along with the Form I-129 petition, a copy of the beneficiary's transcript and diploma of license issued by the Agrarian State University of Moldova, and an English translation of these documents. The diploma of license, which was issued to the beneficiary on June 27, 2003, indicates that the beneficiary was admitted to the university in 1998, and was awarded the license degree in the field of economy with the specialty international economic relations. The letter from the petitioner reflects employment of the beneficiary from February 2004 to December 7, 2004, and the letter from INCOMLAC S.A. shows the beneficiary's employment from February 2000 to May 2003.

On appeal, counsel submits into the record a transcript issued to the beneficiary. However, this transcript's information is inconsistent with the transcript that was submitted earlier into the record. For example, the transcript submitted on appeal is issued by the Technical University of Moldova's faculty of Technology and Management in Food Industry, reflects a major in milk and dairy products technology, lists coursework that is not shown on the transcript from the Agrarian State University of Moldova, and shows the beneficiary as studying at the university from September 1, 1999 to June 25, 2003. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO finds that no evidence in the record of proceeding explains or reconciles the inconsistencies in the educational documents. Based on the inconsistencies in these documents, the AAO finds that the petitioner fails to establish the beneficiary's qualifications pursuant to one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C).

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.

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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.