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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 02 092 54721 Office: NEBRASKA SERVICE CENTER Date: MAR 18 2004

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)(2)

ON BEHALF OF PETITIONER:

[redacted]

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 service center director 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 manufacturer of wood products that seeks to employ the beneficiary, a citizen of Mexico, as a management consultant. The petitioner, therefore, endeavors to classify the beneficiary as a TN-2 alien to perform services as a professional business person pursuant to section 214(e)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (e)(2).

The director denied the petition because the beneficiary does not meet the minimum educational or alternative credential requirements for the classification sought.

On appeal, counsel asserts that CIS approved the first TN2 visa for the beneficiary and, therefore, it is difficult to understand its decision to deny the second TN2 visa, as both applications had the same information and evidence. Counsel further states that the beneficiary's duties, which include collecting, reviewing, and analyzing information and making recommendations to upper management, are consistent with the duties of a management consultant. Counsel finally states that the beneficiary's more than ten years of experience as a production manager qualifies her for a management consultant position.

Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)(2), states:

> An alien who is a citizen of Canada or Mexico . . . who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15) . . . .

Pursuant to 8 C.F.R. § 214.6(b):

> *Business activities at a professional level* means those undertakings which require that, for successful completion, the individual has a least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA.

The beneficiary of this petition is a citizen of Mexico. Pursuant to 8 C.F.R. § 214.6(d)(2), a petition on behalf of a citizen of Mexico seeking classification as a TN professional shall be accompanied by:

> (i) A certification from the Secretary of Labor that the petitioner has filed the appropriate documentation with the Secretary in accordance with section (D)(5)(b) of Annex 1603 of the NAFTA.
>
> (ii) Evidence that the beneficiary meets the minimum education requirements or alternative credentials requirements of Appendix 1603.D.1 of Annex 1603 of the NAFTA as set forth in § 214.6(c). This documentation may consist of licenses, degrees, diplomas, certificates, or evidence of membership in professional organizations. Degrees, diplomas, or certificates received by the beneficiary from an educational institution not located within Mexico, Canada, or the United States must be accompanied by an evaluation by a reliable credentials

evaluation service which specializes in evaluating foreign educational credentials. Evidence of experience should consist of letters from former employers or, if formerly self-employed, business records attesting to such self-employment; and

(iii) A statement from the prospective employer in the United States specifically stating the Appendix 1603.D.1 profession in which the beneficiary will be engaging and a full description of the nature of the duties which the beneficiary will be performing. The statement must set forth licensure requirements for the state or locality of intended employment or, if no license is required, the non-existence of such requirements for the professional activity to be engaged in.

The job description provided by the petitioner adequately establishes that the beneficiary would be performing the duties of a management consultant. Appendix 1603.D.1 to Annex 1603 of the NAFTA indicates that the profession of management consultant requires a Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement or professional credential attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement.

The record contains a letter from Mrs. Micaela Ombrian, General Manager of Contraventanas, S.A., de C.V., and a translation. The translation states, in part, as follows: "Mrs. Marthaa [sic] Lilia Lopez worked for this company since October 24, 1988 until December 1999 as "Production Manager". [sic] The translation, however, is not accurate. The document in Spanish states that the beneficiary has been working for Contraventanas, S.A., de C.V., since October 24, 1988 to December 16, 1999, performing as a production manager in the latest years. The number of years the beneficiary worked as a production manager is not specified. Furthermore, Mrs. Ombrian does not describe the duties that were performed by the beneficiary. Accordingly, the director's decision was appropriate. The beneficiary is not qualified to work as a management consultant because she does not possess the required professional experience.

The director's decision does not indicate whether he reviewed the prior approval of a TN-2 nonimmigrant petition on behalf of the beneficiary. It is noted, however, that 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). More importantly, the Administrative Appeals Office is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary meets the requirements for the classification sought, as defined under section 214(e) of the Act.

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 met that burden.

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