

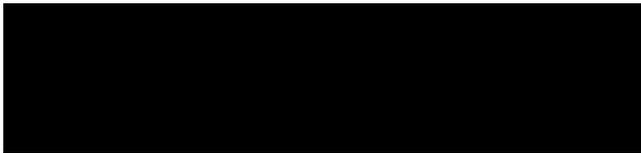


U.S. Citizenship
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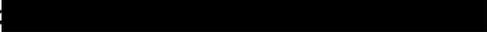
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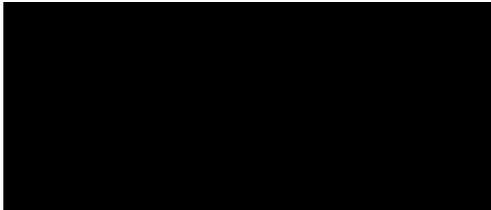


FILE: SRC 04 090 50611 Office: TEXAS SERVICE CENTER Date: **SEP 02 2005**

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. The appeal will be dismissed. The petition will be denied.

The petitioner produces, packages, sells, and distributes German sausage and luncheon meats. It seeks to employ the beneficiary as a food scientist. 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, counsel states that the beneficiary qualifies for the proffered position, and submits additional and previously submitted 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 a food scientist. The director concluded that the letter from [REDACTED] and educational evaluation from American Evaluation Institute (AEI) failed to persuasively establish that the beneficiary's training and work experience are the equivalent to a U.S. bachelor's degree in food science. Counsel refers to an April 23, 2004 educational evaluation from AEI, the beneficiary's transcripts, and an April 23, 2004 letter from [REDACTED] to support his contention that the beneficiary qualifies for the proposed position.

The record reveals that the petitioner has failed to establish that the beneficiary possesses the equivalent to a U.S. bachelor's degree in food science or a related degree.

As 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 required by the specialty occupation, the petitioner must 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.

Although the evaluation from AEI states that the beneficiary's education and work experience are equivalent to a U.S. bachelor's degree in food science offered at accredited institutions of higher education, this evidence satisfies none of the criteria under 8 C.F.R. §§ 214.2(h)(4)(iii)(D). No evidence depicts the evaluator as 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, as required under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Likewise, no evidence establishes 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2). According to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), an educational evaluation from a credentials evaluation service that specializes in evaluating foreign educational credentials, such as AEI, can be used to equate the beneficiary's credentials to a U.S. baccalaureate degree. But the evaluator cannot consider work experience in the evaluation. Here, since AEI's evaluation includes work experience it does not persuasively establish the beneficiary's qualifications for the proposed position. Moreover, the director correctly found that the evidence did not support AEI's determination that the beneficiary possesses the educational equivalent to a U.S. bachelor's degree in food science. As noted below, the supporting documentation as to the beneficiary's employment is conflicting. As stated by the director, CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. In *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988), the Board of Immigration Appeals stated that where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. The AAO notes that CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). No evidence establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(4).

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

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).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

A combination of the beneficiary's education and work experience fails to establish the equivalent of a U.S. bachelor's degree in food science or a related field. The record contains the beneficiary's resume, transcript, diploma examination certificate, apprenticeship certificate, state elementary school certificate, graduation certificate from the State Technical College, and employment certificates from [REDACTED]. This evidence fails to establish that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge in food science, which is 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.

In the April 1, 2003 letter [REDACTED] describes the beneficiary's employment as a butcher and a food production manager. The beneficiary produced fresh sausage, boiled and cooked sausage, produced pickles and preserved products, carved and cut beef and pork meat, and trained young butcher apprentices. The beneficiary also prepared smoked meat, modified its smoking phases, and created a salt mixture for it. The AAO finds the referenced duties parallel those of a chef or cook, which are occupations that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reports do not require a bachelor's degree.

[REDACTED] in the April 23, 2004 letter, changes the beneficiary's job duties and job title to food scientist/food production specialist, creating a significant discrepancy in the employment certifications. 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 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). As the evidence from [REDACTED] is not reliable, it fails to establish the beneficiary's job title and duties during his employment there. This evidence is also not reliable in establishing whether the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Whether or not the beneficiary has recognition of authority in a field that is related to food science is inconsequential given that no evidence establishes the beneficiary's experience. For these reasons, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As related in the discussion above, the petitioner has failed to establish that the beneficiary possesses the equivalent to a U.S. bachelor's degree in food science or a related degree. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the proposed position is not a specialty occupation. The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource that the AAO routinely consults for information about the duties and educational requirements of particular occupations, reveals that the proposed

position resembles a chef, which is an occupation that does not require a bachelor's degree in a specific specialty.

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.