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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: SRC-02-078-50829 Office: Texas Service Center

Date: JAN 22 2003

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a beach front resort with more than 320 employees and a gross annual income in excess of \$17 million. It seeks to employ the beneficiary as a landscape supervisor/architect for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief along with additional documentation.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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.

The director denied the petition because the petitioner failed to establish that the beneficiary had attained at least three years of overall work experience equivalent to a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that, in denying the petition, the Service not only misconstrued previously-submitted evidence but misinterpreted the findings of an evaluation of the beneficiary's work experience. Counsel states that during the course of his employment from 1989 to 1998, although initially assigned to performing general landscape labor, the beneficiary was gradually entrusted with more professional managerial and supervisory responsibilities. According to counsel, the beneficiary's cumulative employment experience equates to the attainment of a

baccalaureate degree in the specific specialty of landscape management.

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.

The beneficiary in this case does not hold a baccalaureate degree in the specialty of landscape management or in any other field. Nor does the beneficiary hold an unrestricted State license, registration, or certification which authorizes him to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D), equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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;
- (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 beneficiary does not meet any of the above requirements. There is no indication in the record that the beneficiary has completed recognized college-level equivalency examinations or special credit programs, such as CLEP or PONSI. Additionally, there is no indication in the record that the beneficiary has completed any college or university courses or that he has been granted certification or registration from a nationally-recognized professional association or society for the specialty of landscape management.

The petitioner has submitted three advisory opinions attesting to the beneficiary having the equivalent, through his professional experience, of a bachelor's degree in a specific specialty.

Professor of Management and Information Systems at Seattle Pacific University, determined the beneficiary's twelve years of professional experience is equivalent to a baccalaureate degree in management with specialization in landscape management.

of the Foundation for International Services, Inc., also rendered determinations that the beneficiary's experience equated to an educational background of an individual with a bachelor's degree in landscaping management.

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an

advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm. 1988).

In their respective submissions [REDACTED] listed the employment documents and letters of reference upon which their evaluations were based, but failed to specify exactly how they managed to arrive at their conclusions. Nor did they submit copies of the relevant portions of the materials used in formulating their decisions. The submission from [REDACTED] merely indicated the evaluator's concurrence with the findings arrived at [REDACTED] evaluation.

Moreover, it does not appear that any of the evaluators used by the petitioner have 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 by 8 C.F.R. 214.2(h)(4)(iii)(D)(1). Although [REDACTED] of Seattle Pacific University states that he is a recognized authority under 8 C.F.R. 214.2(h)(4)(iii)(d)(1), the record does not contain any independent evidence to show that Seattle Pacific University has given him the authority to grant college-level credit for an individual's training and/or experience. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). As such, the evaluations provided by the petitioner are accorded little weight.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(5), the Service may determine that equivalence to completion of a baccalaureate degree in a 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 for expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree, *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;
- (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, 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.

In this case, since the beneficiary has no college-level education, the petitioner must demonstrate that he has twelve (12) years of qualifying employment in the specialty occupation. In response to the Service's Request for Evidence, the petitioner submitted an employment letter from Stefani Veiculos e Autopecase Ltda, indicating the beneficiary had been employed by that firm as follows: from March 1989 to March 1990, as a general laborer performing tile painting, concrete work, wallpapering, and preparing surfaces for painting; from April 1990 to March 1998, as section supervisor, overseeing the work of laborers engaged in construction, repair and maintenance of landscape areas and related equipment; and from April 1998 to April 1999, as landscape manager engaged in planning and implementing work procedures, interpretation of specifications, development of site plans, and coordination of construction.

Also submitted by the petitioner was a letter from [REDACTED] of Perdido Beach Resort, indicating that since June 1999, the beneficiary has been employed as landscape supervisor, in which capacity he has been responsible for landscape design, installation of lighting, fountains and related projects, and training and managing personnel involved in landscape maintenance as well as the implementation of new grounds projects.

Thus, from March 1989 until April 1998, the beneficiary performed routine maintenance and repair duties as a general landscape laborer, after which he was employed in the capacity of supervisor/overseer of landscape maintenance and construction work. Only since April 1998 has the beneficiary been involved in the actual planning and design of landscape projects. As noted by the

director in his decision, this time period would count for only three-and-one-half years of professional experience in the theoretical and practical application of specialized knowledge, as opposed to twelve years of specialized training and/or work experience required for each year of college-level training in the specific specialty, as set forth in 8 C.F.R. 214.2 (h)(4)(iii)(D)(5).

The beneficiary in this case has not demonstrated membership in any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. The record does not contain any evidence that the beneficiary is licensed or registered to practice the specialty occupation in a foreign country. The petitioner has not provided any published material by or about the alien in professional publications, trade journals, or major newspapers. Nor is there any evidence to document achievements which a recognized authority has determined to be significant contributions by the beneficiary to the field of the specialty occupation.

In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

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.