

STATE OF NEW YORK  
DEPARTMENT OF STATE  
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

**BONG LEE**

**DECISION**

For a License as an Esthetician

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on January 8, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 43-23 42nd Street, Apt C-1, Sunnyside, New York 11104, having been advised of her right to be represented by an attorney, was represented by her non-attorney son, Dennis Lee, of the same address.

The Division of Licensing Services (hereinafter "DLS") was represented by Supervising License Investigator Bernard Friend.

**ISSUE**

The issue before the tribunal is whether the applicant has sufficient experience to qualify for a license as an esthetician.

**FINDINGS OF FACT**

1) By application dated November 20, 1994 the applicant applied for a license as an esthetician (State's Ex. 2). With the submission of her application, and subsequent thereto in response to a letter from DLS dated March, 1995, she provided evidence that prior to July 5, 1994 she acquired several years experience providing manicure and waxing services. Additional evidence regarding such experience, and of experience applying facial masks and lotions, was submitted at the hearing (App. Ex. A and B).

2) By letter dated October 22, 1996 the applicant was advised by DLS that it proposed to deny her application for want of sufficient experience, and that she could request an administrative review. The applicant made such a request, and by letter dated November 14, 1996 she was advised by DLS that after review it continued to propose to deny her application but that she could request an administrative hearing, which she did by letter dated November 20, 1996. Accordingly, notice of hearing was sent to her by certified mail on December 19,

1996. When the receipt for the mailing was not received, an additional copy of the pleadings was sent to the applicant by regular first-class mail (State's Ex. 1).<sup>1</sup>

3) The applicant is currently licensed to operate an appearance enhancement business and to engage in the practice of nail specialty (manicure and pedicure) (State's Ex. 2).

### OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that she is qualified to be licensed. State Administrative Procedure Act (SAPA), §306(1). Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. *Gray v Adduci*, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). "The question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically." *City of Utica Board of Water Supply v New York State Health Department*, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted).

II- The applicant has applied pursuant to General Business Law (GBL) §406[d], the "grandparenting" provision, which provides that a license as an esthetician may be issued to a person who provides satisfactory evidence of at least one year of experience performing all the functions of an esthetician prior to July 5, 1994, the effective date of the licensing statute. Those functions are the enhancement of the appearance a human being by the use of compounds or procedures including makeup, eyelashes, depilatories, tonics, lotions, waxes, and tweezing. GBL §400[6].

The evidence establishes that the applicant has qualifying experience in only waxing and the application of lotions and tonics.<sup>2</sup> In determining whether that experience is sufficient, it is necessary to consider the legislative intent "to protect the health and safety of the consumers of the services of the appearance enhancement industry...." L. 1992, c. 509, §1. The respondent's experience is of limited scope. There is no evidence that she has professional experience in tweezing, the application of makeup, the affixing of eyelashes, or the use of depilatories. Her experience is, therefore, insufficient.

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<sup>1</sup> At the hearing the applicant acknowledged receipt of the notice of hearing and raised no objection to personal jurisdiction.

<sup>2</sup> The applicant's experience in giving manicures and pedicures is irrelevant, as those procedures fall under the definition of "nail specialty" (GBL §400[4]), for which a separate license (which the applicant currently holds) is issued.

**CONCLUSIONS OF LAW**

The applicant has failed to establish by substantial evidence that prior to July 5, 1994 she had been actively and continuously engaged in the practice of all of the aspects of esthetics, as defined by GBL §400[6], for at least 1 year. GBL §406; SAPA §306[1]. Accordingly, her application should be denied.

**DETERMINATION**

**WHEREFORE, IT IS HEREBY DETERMINED THAT** the application Bong Lee for a license as an esthetician is denied.

Roger Schneier  
Administrative Law Judge

Dated: January 9, 1997