

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

MISHON LONG

DECISION

For a Natural Hair Styling License

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on September 30, 1996 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 77 Leffert Place, Brooklyn, New York 11238, having been advised of her right to be represented by an attorney, appeared *pro se*.

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

ISSUE

The issue before the tribunal is whether the applicant has sufficient experience to qualify for a license as to engage in the practice of natural hair styling.

FINDINGS OF FACT

1) By application dated July 3, 1995 the applicant applied for a license to engage in the practice of natural hair styling (State's Ex. 2). With her application she submitted evidence that prior to July 5, 1994 she acquired several years experience in the practice of hair braiding. Additional evidence regarding her experience, in the form of the applicant's testimony, was offered at the hearing, and established that prior to July 5, 1994 she obtained several years' experience in providing customers with various types of braids, twist, coils, curls, locks, and weaves.

2) By letter dated August 1, 1995 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. She apparently requested such a review, as by letter dated June 3, 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 June 3, 1996. Accordingly, notice of hearing was served on her by certified mail on August 12, 1996 (State's Ex. 1).

OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that she 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 to engage in the practice of natural hairstyling may be issued to a person who provides satisfactory evidence of at least one year of experience performing the functions of a natural hairstylist prior to the effective date of the licensing statute (July 5, 1994). Those functions are set forth in GBL §400[5]. The evidence establishes that the applicant has sufficient qualifying experience in those functions.¹

CONCLUSIONS OF LAW

The applicant has established by substantial evidence that she was actively and continuously engaged in the practice of natural hairstyling, as defined by GBL §400[5], for at least 1 year prior to July 5, 1994. GBL §406; SAPA §306[1]. Accordingly, her application should be granted.

¹ Unlike the other specialties licensed under GBL Article 27 (nail, esthetics, and cosmetology), for which the definitions are specifically restricted to certain stated activities, natural hairstyling is defined as including, but not being limited to, a range of functions. Thus, since all of the aspects of natural hairstyling are not set forth in the statute, it is not possible to say that in order to qualify for grandparenting an applicant must demonstrate that she has experience in all of those aspects. Rather, it is necessary for the licensing agency to look at the proffered experience and determine whether it falls within the general definition of natural hairstyling.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application Mishon Long for a license to engage in the practice of natural hairstyling is granted, and the Division of Licensing Services is directed to issue the license forthwith.

Roger Schneier
Administrative Law Judge

Dated: September 30, 1996