

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

YAFFA KHIYAEV

DECISION

For a Nail Specialty License

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on August 7, 1997 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 41 Kew Gardens Road, Apt 2G, Kew Gardens, New York 11415, having been advised of her right to be represented by an attorney, chose to represent herself.

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 nail specialty license.

FINDINGS OF FACT

1) By application dated September 3, 1996 the applicant applied for a nail specialty license. The application is based on a claim of ten years of experience outside of New York State (State's Ex. 2).

2) By letter dated September 23, 1996 the applicant was advised by DLS that she had to submit documentation as to her claimed experience (State's Ex. 3). In response, the applicant submitted evidence showing that she completed a course in manicure and pedicure at a school in Tel-Aviv, Israel on March 17, 1987 (State's Ex. 5), after which she claims to have worked as a nail specialist in Israel for one year. She then emigrated to New York, where, as demonstrated by letters from customers, she has worked part time as an unlicensed nail specialist for a period in excess of six years (State's Ex. 7).

3) By letter dated March 25, 1997 the applicant was advised by DLS that it proposed to deny her application. On April 1, 1997 the applicant requested a review, and by letter dated May 20, 1997 she was advised that after the review DLS continued to propose to deny her application. In response, by letter dated May 29, 1997 the applicant requested a hearing. Accordingly, notice of hearing was served on her by certified mail delivered on June 18, 1997 (State's Ex. 1).

OPINION AND CONCLUSIONS OF LAW

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that she has acquired the required experience. 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- An applicant for a license to practice nail specialty must establish: That he or she has completed an approved course in the study of nail specialty (after which he or she must pass the examination administered by DLS); or that he or she is licensed in another jurisdiction which has reciprocity with the State of New York; or that he or she has engaged in the practice of nail specialty in another jurisdiction for a period of at least five years. General Business Law (GBL) §406[2][c].

The applicant has established: That she completed a course in nail specialty, but not that the course equaled or exceeded the number of hours and content required for New York State licensure, as required by 19 NYCRR 160.32; that she may have been licensed in Israel, but not that there is reciprocity in such licensure between New York and Israel, as required by 19 NYCRR 160.30; and that she engaged in the practice of nail specialty in another jurisdiction (Israel) for only one of the required five years.¹ She has not established that she has met any of the required criteria and, therefore, her application must be denied.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Yaffa Khiyaev for a license to engage in the practice of nail specialty is denied.

Roger Schneier
Administrative Law Judge

Dated: August 8, 1997

¹ The applicant cannot be granted a license based on her unlicensed activity in New York inasmuch as she submitted her application more than twelve months after the effective date of the statute. GBL §406[2][d].