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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

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: 15 MAR 2002

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Other Worker Pursuant to § 203(b)(3)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)(A)(iii).

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner on appeal. The appeal will be dismissed.

The petitioner is an electronic service center. It seeks to employ the beneficiary permanently in the United States as an electronic technician. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary had the requisite experience as of the petition's filing date.

On appeal, counsel submits a statement.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

The issue to be considered in this proceeding is that to be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's filing date. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is August 19, 1997.

The Application for Alien Employment Certification (Form ETA 750) indicated that in order to perform the duties of the position, the beneficiary must possess one year of experience in the job offered.

The director determined that the petitioner had not shown that the beneficiary possessed the requisite experience in the job offered and denied the petition accordingly.

The director noted that:

> The petitioner responded to the Service request for evidence on January 11, 2001. Included with the additional evidence was a letter from the petitioner which stated that the beneficiary was employed as an audio video technician in Pakistan from June 1979 to March 1981 and in Saudi Arabia from July 1981 to May 1990. Evidence was not submitted from either of the former employers to substantiate the petitioner's claim.

On appeal, counsel argues that:

> The INS erred in denying the Application since in the Request for Additional Documents the INS requested a letter from current or former employer, giving information regarding the client's experience. On January 11, 2001, the Petitioner submitted said letter, providing the name, address, and title of the employer and specific duties. In their decision, I.N.S. claimed that "evidence was not submitted from either employers to substantiate the Petitioner's claim." However, the Petitioner clearly provided the evidence requested by the I.N.S. in the Request for Additional Evidence.

Counsel's argument is not persuasive. As the record does not contain an employment history from the beneficiary's previous employers, Abu-Khamsin, Inc., and Jaffers Electronics of Lahor, it cannot be determined if the beneficiary had one year of experience in the job offered as of the filing date of the petition. Consequently, the petition may not be approved.

Even though counsel asserts that the beneficiary has the required experience, no evidence of this experience has been submitted on appeal. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Therefore, the petitioner has not overcome the director's objections and the petition may not be approved.

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.