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U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date: MAR 12 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

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.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

[Signature]
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based preference immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn, the appeal will be sustained and the petition will be approved.

The petitioner is a machine shop. It seeks to employ the beneficiary permanently in the United States as a precision machinist. As required by statute, the petition was accompanied by an individual labor certification from 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 brief.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), 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 or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. 204.5(1)(3) states, in pertinent part:

(ii) *Other documentation* -- (A) *General*. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers*. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupational designation. The minimum requirements for this classification are at least two years of training or experience.

The Application for Alien Employment Certification (Form ETA 750) indicates that the minimum requirement to perform the job duties of the proffered position of precision machinist are two years of experience in the job offered. The director issued a Request for Evidence on October 13, 1999, which stated that:

There is a contradiction in the evidence submitted. Part 15 of the labor certification indicates that the beneficiary worked in Poland at Doria Metalworks until October of 1995. This contradicts the day he started employment with the petitioner in the United States in July of 1995. A letter from Edward Kubiak, Manager for Production at Doria Metalworks indicates that the beneficiary was employed with the Polish business until June 30, 1995. Please explain.

The record contains an affidavit from the beneficiary explaining that a clerical error had been made in filling out the ETA 750. The beneficiary stated that he worked as a full time worker at Doria Metalworks from September 1993 through June of 1995. The beneficiary also testified that he worked as an apprentice at Doria Metalworks as a machinist from September 3, 1990 through July 30, 1993. In support of these statements, the petitioner submitted a copy of the beneficiary's passport indicating his entry into the United States on July 15, 1995, and a Certificate of Employment from Doria Metalworks dated March 12, 1996. Therefore, the petitioner has overcome the director's concern.

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 sustained that burden.

ORDER: The appeal is sustained.