

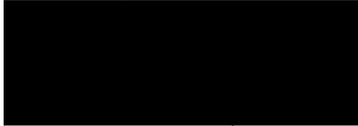


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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

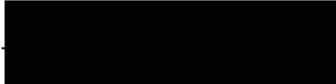


File: [Redacted]

Office: NEBRASKA SERVICE CENTER Date:

MAR 22 2001

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER: Self-represented

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

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 appeal will be dismissed.

The petitioner is a envelope printing company. It seeks to employ the beneficiary permanently in the United States as a printer. 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 job offered requires a skilled worker.

On appeal, the petitioner provides a statement.

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 issue to be considered in this proceeding is whether the petitioner has established that the job offered requires a skilled worker. The petition is accompanied by an Application for Alien Employment Certification, Form ETA 750, approved by the Department of Labor for the position of a printer. The petitioner indicates on the Form ETA 750 that the minimum requirement to perform the job duties of the proffered position is six months in the job offered or one year in a related occupation.

The job offer portion of the application for alien employment certification must clearly indicate that two years of training or

experience are required of entrants to the position. 8 C.F.R. 204.5(1)(3). The critical element is block #14 on the job offer portion of the application for alien employment certification. The employer must clearly show that at least two years of training or experience are required for the job in this block.

In this case, the petitioner indicates that the experience requirement for the proffered position is six months in the job offered or one year experience in a related occupation. Six months' experience in the job offered or one year of experience in a related occupation does not equate to the required two years of training or experience for a skilled worker. Therefore, it is concluded that the proffered position does not require a skilled worker.

As the petitioner has not established that the proffered position requires a skilled worker, the petition may not be approved under section 203(b)(3)(A)(i) of the Act.

Another issue in this case, not raised by the director, is the petitioner's ability to pay the proffered wage. The record indicates that the petitioner has failed to provide any evidence to establish its ability to pay the offered wage.

In visa petition proceedings, the burden of proof is on the petitioner to establish eligibility for the benefit sought by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.