



Bb

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



File: WAC 99 134 53961

Office: CALIFORNIA SERVICE CENTER

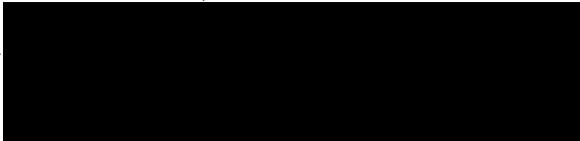
Date: 06 FEB 2002

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:



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

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a baker. It seeks to employ the beneficiary permanently in the United States as a pastry baker. 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, the petitioner provides a statement and indicates that a separate brief and/or evidence is being submitted within thirty days. However, no further documentation has been received. Therefore, a decision will be made based on the record as it is presently constituted.

The issue to be considered in this proceeding is whether the beneficiary has all the training, education, and experience specified on the labor certification as of the petition's filing date. Matter of Wing's Tea House, supra. Here, the petition's filing date is August 19, 1996.

The Application for Alien Employment Certification (Form ETA 750) indicated that in order to perform the duties of the position, the beneficiary must possess two years 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. The director noted that:

The petitioner, in her November 17, 1999 response, failed to provide the described verification letter(s) from either [REDACTED] or from the petitioner, Home Style Donuts. Instead, the petitioner submitted a declaration from the beneficiary, verifying his own employment as a pastry baker at [REDACTED] and a declaration letter from another of the beneficiary's former co-workers at [REDACTED]

On appeal, counsel merely states that "a job verification letter signed by previous employer was missing at the time we filed a response to the INS August 25, 1999 notice. We will submit a job verification letter as proof of beneficiary having possessed more than two years work experience prior to working for the petitioner within 30 days."

No additional evidence has been received to date. As the record does not contain an employment history from the beneficiary's previous employer, it can not be determined if the beneficiary had two years of experience in the job offered as of the filing date of the petition. Consequently, 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 met that burden.

**ORDER:** The appeal is dismissed.