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U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

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

[Redacted]

File: [Redacted] Office: TEXAS SERVICE CENTER

Date: 28 JAN 2002

IN RE: Petitioner:
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]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Texas Service Center. The director's decision to deny the petition was summarily dismissed by the Associate Commissioner for Examinations on appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner is a hotel resort business. It seeks to employ the beneficiary permanently in the United States as a hotel/motel receptionist. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the proffered position is not one requiring the services of a skilled worker.

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), indicated that there are no minimum educational, training or experience requirements for the job offered. The director denied the petition because the petitioner had not established that the position required the services of a skilled worker.

On motion, counsel argues that:

There are numerous positions in the United States economy in which there is a high turnover rate that do require much more than "minimal" qualifications, including positions requiring education and/or training beyond high school, such as the position sought to be filled here. The simple fact that the turnover rate is high, as presumed by the decision and based, apparently, on a single discussion in a single publication, is not dispositive and should not be given any weight in considering this position.

The position filed herein clearly shows that the position requires training and experience beyond that which may be "typical" for this position. While the INS asserts in the order appealed from that the fact that petitioner desires to hire a multilingual receptionist is irrelevant, this is clearly not the case. An examination of the petition and the underlying ETA-750 certainly shows that language skills are an integral part of the position sought to be filled. The petition sets forth as one aspect of the job description that the beneficiary must "assist communications." Similarly, the ETA-750 also requires that the position is to, in part, "assist other departments with communications and guest requests." This clearly means language skills. This is made even clearer when the description of the attempts to recruit U.S. workers is reviewed.

Counsel's argument is not persuasive. The determination of whether a worker is a skilled worker or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor. 8 C.F.R. 204.5(1)(4). Based on the above-cited regulations governing classification as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, the proffered position is not one which requires the services of a skilled worker (at least two years of training or experience). Therefore, the petitioner has not overcome the objections of the director and the Associate Commissioner.

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 Associate Commissioner's decision of March 22, 2001 is affirmed. The petition is denied.