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U.S. Department of Justice

Immigration and Naturalization Service

NOTICE OF APPEALS RIGHTS TO  
STAY A DECISION OR ORDER  
DIVISION OF PERSONAL PRIVACY

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



File: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 18 2002

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

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.

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, Nebraska Service Center, and is now before the Associate Commissioner on appeal. The appeal will be dismissed.

The petitioner is a sewing and alterations business. It seeks to employ the beneficiary permanently in the United States as a seamstress. 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 submits a statement and additional evidence.

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 January 13, 1998.

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.

On appeal, the petitioner states that:

I am appealing your decision due to the fact that this alien [REDACTED] has lots of experience; more than I even require. I am including paperwork that justifies this work experience, that was filed with the State of Oregon.

I am in such desperate need of good seamstresses and cannot find them anytime. I always am looking for a good seamstress and [REDACTED] has the experience I so badly need.

I ask you to please reconsider this decision. I have a very successful alteration business but never have enough good workers, and so want [REDACTED] and her experience in my shop.

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.

It is noted that the petitioner has not established that it had the ability to pay the proffered wage. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

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.