B6

U.S. Department of Justice

Immigration and Naturalization Service

[redacted]

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

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 29 2002

IN RE: Petitioner: [redacted]
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:

[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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

 [redacted]

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be remanded for further consideration.

The petitioner is a commercial cleaning company. It seeks to employ the beneficiary permanently in the United States as a supervisor, cleaning. 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, counsel submits a statement.

The issue to be considered in this proceeding is that to be eligible for approval, a beneficiary must have 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 October 23, 1997.

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, or two years of experience in the related occupation of commercial cleaner.

The director determined that the petitioner had not shown that the beneficiary possessed the requisite experience in the job offered.

On appeal, counsel argues that the beneficiary has the required experience.

The record contains a letter from [redacted] which verifies that the beneficiary had the requisite experience. Therefore, it is concluded that the beneficiary had the requisite experience as a supervisor, cleaning. Therefore, the petitioner has overcome the director's decision.

It should be noted, however, that the name of the business on the labor certification is Cavalier Maintenance Service, Inc. while the petitioner's company is [redacted]

A petition for an skilled worker must be accompanied by a labor certification at the time of filing. 8 C.F.R. 204.5(l)(3)(i). To establish that it is a successor in interest to the business which filed the labor certification, the petitioner must show that it has assumed all the rights, duties, and obligations of that business.

In addition, the petitioner has the burden of demonstrating that the other business had the ability to pay the wage offered at the time of filing of the labor certification. The petitioner has submitted no evidence that it qualifies as the successor in interest to Cavalier Maintenance Service, Inc. Although it deals with former procedures of the Department of Labor, see Matter of Dial Auto Repair Shop, Inc., 19 I&N Dec 481 (Comm. 1986).

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration of the issue stated above. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which if adverse to the petitioner, is to be certified to the Commissioner for review.