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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



File: WAC 01 244 56776 Office: CALIFORNIA SERVICE CENTER

Date: 26 SEP 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)

*identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy*

IN BEHALF OF PETITIONER:  
[Redacted]

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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 sustained.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty cook. 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 priority date of the petition.

On appeal, the petitioner submits additional evidence.

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 June 5, 2000.

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 submits an employment letter from Howard Hamada, Vice President of Hamada of Japan, which affirms that the beneficiary had the requisite experience as a cook.

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 sustained that burden.

**ORDER:** The appeal is sustained.