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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D. C. 20536

[Redacted]

AUG 12 2003

File: [Redacted] Office: Nebraska Service Center

Date:

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)

ON BEHALF OF PETITIONER:

[Redacted]

PUBLIC COPY

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 Bureau of Immigration and Citizenship Services (Bureau) 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.

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

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a metal stamping company. It seeks to employ the beneficiary permanently as a tool and die maker. 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 met the petitioner's qualifications for the position as stated in the labor certification. Specifically, the director noted that the beneficiary did not meet the educational requirements as specified on the ETA-750.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), 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 labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. 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 priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is May 31, 2000.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of tool and die maker required four years of high school, two years of college, and five years of experience as an apprentice.

The director determined that the petitioner had not established that the beneficiary had the requisite years of education and denied the petition. The director noted that the beneficiary had completed only a four year apprenticeship.

On appeal, counsel argues that the ETA-750 was filled out in error, regarding the number of years of training an apprentice needs for completion of an apprenticeship. Counsel further argues that:

...the normal time period to complete the required apprenticeship schooling hours is two years and usually fulfilled through a technical college or trade school. Also applicable college courses can be used in lieu of

tool and die classroom instruction as indicated in the Apprenticeship Indenture. Thus the listing of "2 years" of college arises from these factors.

The record contains an evaluation from [REDACTED] which states that the beneficiary has received training in the European system which parallels the skills and knowledge that an individual would have received under the Wisconsin apprenticeship system.

The issue here is whether the beneficiary met all of the requirements stated by the petitioner in block #14 of the labor certification as of the day it was filed with the Department of Labor. The beneficiary is required to have 2 years of college and 5 years of apprenticeship on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

The petitioner has not established that the beneficiary had two years of college and 5 years of apprenticeship in tool and die making on March 3, 2000. Therefore, 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 sustained that burden.

ORDER: The appeal is dismissed.