

PUBLIC COPY

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

B6

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

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



File: EAC 01 228 56304 Office: VERMONT SERVICE CENTER

Date: DEC 05 2003

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 Citizenship and Immigration Services (CIS) 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, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Vermont Service Center. The petitioner filed an untimely notice of appeal that was rejected by the director as an appeal, but accepted as a motion to reopen. The director determined that the grounds for denial of the petition had not been overcome and affirmed the previous denial. The case is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a moving company. It seeks to employ the beneficiary permanently in the United States as a "driver/mover (supervisor)" pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

On January 25, 2002, the director determined that the petitioner had not established that the beneficiary met the job requirements set forth by the terms of the labor certification. The director concluded that the petitioner had failed to submit documentation demonstrating the beneficiary's qualifications or work experience required by the position. The director denied the petition.

The petitioner filed an untimely appeal that was accepted as a motion to reopen by the director pursuant to 8 C.F.R. § 103.3(a)(1)(v)(B)(2). Along with the motion to reopen, the petitioner submitted a letter dated April 11, 2002 from the beneficiary's employer. This letter, signed by the employer's manager, states that four years following his initial employment with the company in 1991, the beneficiary was promoted to driver/mover. He was again promoted to supervisor in 2000.

On August 23, 2002, the director concluded that the beneficiary did not begin to perform the duties of the job described in the labor certification until two years after the priority date of January 14, 1998. As the beneficiary did not possess the required qualifications for the position as of the filing date of the petition, the petition could not be approved. The director concluded that the grounds for the denial of the petition had not been overcome and affirmed the previous denial.

On appeal, the petitioner asserts that the beneficiary was promoted to driver/mover status before the priority date of January 14, 1998.

In relevant part, section 203(b)(3)(A)(i) of 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.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is January 14, 1998. The approved alien labor certification, "Offer of Employment," (Form ETA-750 Part A) describes the terms and conditions of the job offered. Block 14 and Block 15, which should be read as a whole, set forth the

educational, training, and experience requirements for applicants. In this case, Block 14 contained the only information appearing in these sections. This information appears as follows:

Experience	Job Offered	Related Occupation	Related Occupation
	Yrs.	Yrs.	Driver (moving company)
	2	or 2	

Based on the information set forth above, it can be concluded that an applicant for the petitioner's driver/mover (supervisor) position must either have two years experience in the job offered or two years experience in the related occupation of driver (moving company).

In this case, the employer's letter indicates that the beneficiary spent five years as a driver/mover following his promotion in 1995 until his last promotion to supervisor in 2000. Thus, he gained the requisite two years experience for the position required in the alternative related occupation prior to the visa priority date of January 14, 1998.

Because the alternative requirement for the position described in Block 14 state that the petitioner would accept two years experience in a related occupation of driver (moving company), it can be concluded that the beneficiary's past work experience as a driver/mover meets this requirement.

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 met that burden.

ORDER: The appeal is sustained.