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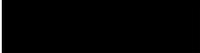
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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invasion of personal privacy**

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



File:  Office: TEXAS SERVICE CENTER

Date: DEC 18 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)

IN BEHALF OF PETITIONER:



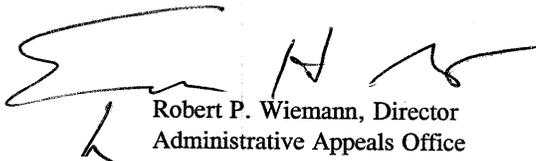
INSTRUCTIONS:

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 preference visa petition was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion to reopen. The motion will be granted, the previous decisions of the director and the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner is a hotel resort business. It seeks to employ the beneficiary permanently in the United States as a hotel/motel receptionist. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the proffered position is not one requiring the services of a skilled worker. The Associate Commissioner affirmed this determination on appeal and on motion.

On motion, counsel submits a brief and additional evidence.

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.

8 C.F.R. 204.5(l)(3) states, in pertinent part:

(ii) *Other documentation* -- (A) *General*. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers*. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupational designation. The minimum requirements for this classification are at least two years of training or experience.

The Application for Alien Employment Certification (Form ETA 750) indicated that there are no minimum educational, training or experience requirements for the job offered.

The AAO determined that the petitioner had not established that the position required the services of a skilled worker.

On motion, counsel submits a copy of the definition of a hotel clerk from the Dictionary of Occupational Titles of the U.S. Department of Labor and argues that:

As seen in the Exhibit "B", the definition of "hotel clerk" from the Dictionary of Occupational Titles of the U.S. Department of Labor, foreign language capabilities, as required by the Petitioner for this position, is absent from the definition. Thus, the requirement that the person filling this position have foreign language capability is in addition to the typical requirements for this position and should be considered to be an extra requirement, as stated on the ETA-750, which the person who fills the position must meet. As will be noted in a review of the definition in Exhibit "B", communicating with guests is at the core of the many of the functions described for this position. Thus, the ability to communicate with guests is paramount. Where, as here, the Petitioner requires that the person filling the position have foreign language capabilities to be able to communicate with their international guests effectively, and thus be able to perform the core functions of the position described in Exhibit "A", this should be considered to be a condition of the position requiring extra skill, and thus, that this position be considered to be a skilled position.

Counsel's argument is not persuasive. As stated by the AAO in his decision:

The determination of whether a worker is a skilled worker or other worker will be based on the requirements of training and/or experience placed on the job by the prospective employer, as certified by the Department of Labor. 8 C.F.R. 204.5(1)(4). Based on the above-cited regulations governing classification as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, the proffered position is not one which requires the services of a skilled worker.

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the director, or AAO, in their decisions. The petitioner has not established eligibility pursuant to section 203(b)(3) of the Act and 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 met that burden.

ORDER: The Associate Commissioner's decision of May 2, 2001, and January 28, 2002 are affirmed. The petition is denied.