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

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

PUBLIC COPY



JUL 03 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: SELF-REPRESENTED

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

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 Citizenship and Immigration 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, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based 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 restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty chef. 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 priority date.

On appeal, the petitioner submits a statement.

The issue to be considered in this proceeding is whether the beneficiary has all the training, education, and experience specified on the labor certification as of the petition's priority date. *Matter of Wing's Tea House, supra*. Here, the petition's filing date is February 23, 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 four 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 states that a mistake has been made on the reference letters. The petitioner asserts that the beneficiary has been working for Guangzhou Beijing Hotel from January 2001 to the present, and worked for seven years for Bon Hon Restaurant, and for two years for Hai Kon Restaurant. Finally, the petitioner states that these two restaurant are no longer in business and therefore, no references can be furnished.

No additional evidence has been submitted. As the record does not contain an employment history from the beneficiary's previous employers, it can not be determined if the beneficiary had four years of experience in the job offered as of the priority date of the petition. Consequently, 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 appeal is dismissed.