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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]

File: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **JUL 11 2003**

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]

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
Robert P. Wiemann, 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 sustained.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a 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, counsel submits additional evidence.

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*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is April 19, 2001.

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 employment letters from Robert Lee, manager, No. 1 China Buffet, Columbus, Ohio, and Peter Sung, manager, Imperial Garden Chinese Cuisine, Columbus, Ohio, which affirm that the beneficiary had the requisite experience as a chef.

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.