

**PUBLIC COPY**

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

**BB**

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536



**JUL 16 2003**

File: SRC 01 151 58748

Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



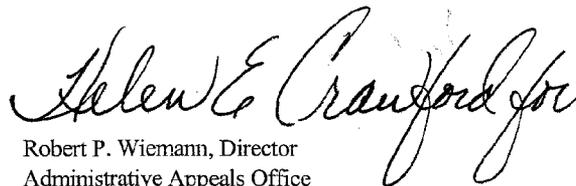
**INSTRUCTIONS:**

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 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, 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 (AAO) on appeal. The appeal will be sustained.

The petitioner is a folding carton manufacturer. It seeks to employ the beneficiary permanently in the United States as a pressroom supervisor. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

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.

Eligibility turns on whether the petitioner has established that the beneficiary met the petitioner's qualifications for the position as stated in the Form ETA 750 as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The petition's priority date in this instance is May 19, 1999.

The director considered that the initial evidence was deficient. In a request for evidence (RFE) dated January 8, 2002, the director exacted evidence of the petitioner's ability to pay the proffered wage and "a letter from the former employers of the beneficiary attesting to the four years of [the beneficiary's] work experience."

Counsel responded with a letter of the petitioner. It claimed the beneficiary's employment with it for almost nine (9) years as a first pressman from December 1985 to August 1994, more than the Form ETA 750 required. Moreover, the record already contained the petitioner's contemporaneous personnel folder for the beneficiary, and it verified the same nine years of full-time experience. See Immigrant Petition for Alien Worker (I-140), Exhibit 5, Beresford Box Company, Limited, Employee Information Profile (personnel folder).

The director, however, weighed the beneficiary's experience at

only "former" employers, BB and MP, and determined that it totaled but three years and six months as a first pressman. The director concluded that the petitioner had not demonstrated that the beneficiary met the minimum requirements of the Form ETA 750 at the priority date and denied the petition.

Counsel states on appeal that the evidence verifies almost nine (9) years of experience with the petitioner before the priority date, more than required by the Form ETA 750 in block 14:

... The sponsor letter of the petitioner dated 4/3/01 and enclosed with the I-140 petition was attached as Exhibit 1 of [the I-140]. That letter similarly attests to [the beneficiary's] experience as a First Pressman ... on page 2 in paragraph 4, line 6...

Counsel's argument is well taken. The personnel folder resolves the doubt that the beneficiary met the experience requirement as stated by the petitioner in Form ETA 750, block #14, viz., four (4) years as a first pressman before the priority date.

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 education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 204.5(d). *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The petitioner has established that the beneficiary had the specified training. Therefore, the petitioner has overcome this portion of the director's decision. The decision raised no other issue.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, § U.S.C. § 1361. The petitioner has met that burden.

**ORDER:** The appeal is sustained.