

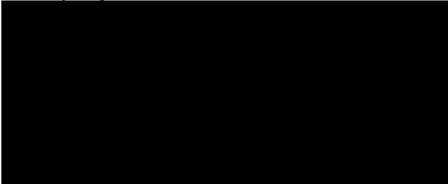
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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



**U.S. Citizenship  
and Immigration  
Services**

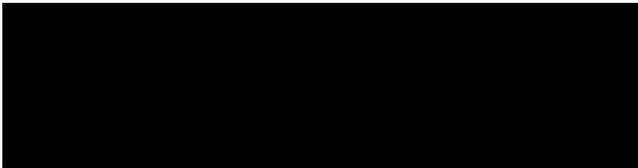


FILE: WAC 02 190 52814 Office: CALIFORNIA SERVICE CENTER Date: APR 22 2004

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:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the director to request additional evidence and entry of a new decision.

The petitioner is an international and domestic moving company. It seeks to employ the beneficiary permanently in the United States as a supervisor, household goods/furniture mover 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 November 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 convincing documentation demonstrating the beneficiary's prior work experience required by the position. As the beneficiary did not possess the required qualifications for the position as of the filing date of the petition, the director denied the petition.

On appeal, the petitioner asserts that the beneficiary's past work experience qualifies him for the position described in the approved labor certification.

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. 8 C.F.R. § 204.5(d). 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. Item 14 and Item 15, which should be read as a whole, set forth the educational, training, and experience requirements for applicants. Here, Item 14 requires that an applicant have three years experience in the job offered of supervisor, household goods/furniture mover. Item 15 requires that an applicant speak, read, and write Japanese, as well as have a class BM1 driver's license.

At the outset, it is noted that the petitioner failed to provide any evidence that the beneficiary possesses a class BM1 driver's license as required by the terms of the labor certification. The record also reflects that the director failed to request such evidence. Because there has been sufficient documentation submitted on appeal to establish the beneficiary's past qualifying employment experience, the petition will be remanded to allow the petitioner to provide the additional evidence.

In this case, the petitioner initially submitted two letters from the beneficiary's past employers. In a letter dated May 9, 2002, [REDACTED] of "Preferred Personnel of California" (a division of Corporate Personnel Network, Inc.), indicates that the beneficiary spent six years working as a truck driver supervisor from January 1996 until the present. As an employee of a temporary employment agency, he was assigned to work at the petitioning business in January 1998, as a part-time supervisor of household goods/furniture moving. The petitioner also submitted a second letter, dated January 5, 1998, from [REDACTED] of "GDK International Inc." Mr. [REDACTED] states that the beneficiary worked at his company from March 1992 through December 1995, as a moving service supervisor.

On August 13, 2002, the director requested additional evidence from the petitioner to support the beneficiary's past employment experience. The director instructed the petitioner to provide letters from past employers verifying the beneficiary's duties, titles, dates of employment, and number of hours worked per week. The director also requested that the petitioner provide copies of the beneficiary's Wage and Tax Statements (W-2s) for 1991 through 1995.

In response, the petitioner, through counsel, submitted duplicate copies of the January 1998 letter from GDK International and the May 2002 letter from Preferred Personnel of California. Counsel explained in a cover letter that GDK International was a subsidiary of the petitioning company, but is no longer in business. Counsel also stated that the petitioner pays the employment agency of Preferred Personnel of California \$18.50 per hour for the beneficiary's services. Counsel provided copies of the beneficiary's W-2s for 1992 through 1995 and stated that the 1991 W-2 was not available. The petitioner's 1992 W-2 was issued by Asama Lines International, Inc. and showed that he was paid \$18,800. The 1993 and 1994 W-2s were both issued by the petitioner and show that he was paid \$6,459.21 in 1993 and \$20,437.39 in 1994. Preferred Personnel issued the 1995 W-2 and paid the beneficiary \$22,837.35. The 1995 W-2 appears to contradict Ms. [REDACTED] statement that the beneficiary did not begin working for her company until January 1996.

The director denied the petition, concluding that the evidence did not clarify whether the beneficiary had accrued three years of full-time experience in the job offered as the documentation did not state the number of hours worked per week.

On appeal, counsel submits a letter, dated January 15, 2003, from [REDACTED] the petitioner's president. Mr. [REDACTED] states that the beneficiary has worked for Preferred Personnel of California, a temporary employment agency since 1995. He was assigned to the petitioning business "as of 1995, to the present time." Mr. [REDACTED] asserts that the beneficiary worked for the petitioner full-time from 1995 through 1998 and worked for the petitioner part-time from 1999 through 2002, performing supervisory duties as well as preparing forms in the Japanese language. He confirms that the petitioning business was affiliated with GDK and paid the beneficiary directly in 1993 and 1994. Mr. [REDACTED] states that the beneficiary worked as a moving supervisor ten hours per week in 1993 and 30 hours per week in 1994.

Counsel also submits an affidavit from [REDACTED] a former vice-president of Asama Line International, Inc. She states that the beneficiary was employed by this company in 1992. He worked full-time, 40 hours per week, as a supervisor of international/domestic moving services.

Finally, counsel resubmitted copies of the beneficiary's 1992 - 1995 W-2s, and additionally offered a copy of the beneficiary's 1996 and 1998 W-2s. It shows that Preferred Personnel paid the beneficiary \$26,059.77 in 1996 and that Corporate Personnel Network paid the beneficiary \$20,850.43 in 1998. A copy of the beneficiary's individual 1997 federal tax return was also submitted showing that the beneficiary earned \$26,837.

Although there are some anomalies in the dates offered by the letters, the petitioner's W-2s, combined with the collective description of his past supervisory experience, appear to support his accrual of three full-time years of experience as a supervisor, household goods/furniture mover as of January 14, 1998, the visa priority date.

The petition is being remanded because the director failed to request evidence that the beneficiary holds a class BM1 driver's license. In view of the foregoing, the director's decision is withdrawn. The petition is remanded to the director to request further evidence relevant to the beneficiary's additional credentials.

Similarly, the petitioner may also provide any further pertinent evidence within a reasonable time to be determined by the director. Upon receipt of all evidence, the director will review the record and enter a new decision.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.