



U.S. Citizenship  
and Immigration  
Services



FILE: SRC-02-041-56248 Office: TEXAS SERVICE CENTER Date:

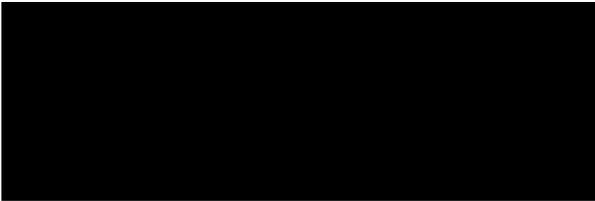
APR 26 2004

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:



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prevent clearly unwarranted  
invasion of personal privacy**

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 preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a developer and manager of convenience stores. It seeks to employ the beneficiary permanently in the United States as a store (retail) manager. The director determined that the petitioner had not 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.

On appeal, counsel submits a brief, and asserts that the beneficiary is qualified.

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.

The issue is 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.

The Application for Alien Employment Certification (Form ETA 750), filed with the Department of Labor on April 16, 2001, indicates that the minimum requirement to perform the job duties of the proffered position of retail store manager is two years of experience in the job offered or in a related occupation.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 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).

Regulations governing evidentiary requirements for a beneficiary's qualifications are at 8 C.F.R. § 204.5(l)(3) and state the following:

(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.

Counsel initially submitted a letter regarding the beneficiary's work experience from Rahm (or Rahim) Sivji, representing the petitioner, which stated that the beneficiary completed a period of nine months employment as a manager for the petitioner from April 1999 to January 2000. Mr. Sivji also stated that the beneficiary worked for Amoco Food Mart from August 1996 to March 1999 as an assistant manager.

The director found that the petitioner had submitted insufficient evidence of the beneficiary's prior experience and of the petitioner's ability to pay the proffered wage, and in a request for evidence (RFE) dated March 20, 2002, required additional evidence of both.

On June 7, 2002, counsel submitted a copy of the petitioner's 2001 Form 1120S U.S. Income Tax Return for an S Corporation. The Form 1120S reflected that the petitioner has ordinary income of \$40,449 in 2001. Such income is sufficient to pay the proffered wage. Counsel also submitted a Deed to Secure Debt and Security Agreement and a lease agreement. No documentation was submitted relevant to the beneficiary's experience.

The director concluded that the evidence of the beneficiary's experience was insufficient to establish that the beneficiary possessed the requisite experience for the job, and denied the petition.

On appeal, counsel states that, as indicated on Part B of Form ETA 750, the beneficiary was employed by the Amoco Food Mart where he gained the experience necessary for the proffered employment. Counsel also states that a letter from that employer, dated April 29, 2002, and certifying that the beneficiary had this experience as a manager between August 1996 to May 1999 for a period of 2 years and 9 months, was previously submitted. Counsel further states that a copy of the letter is again enclosed. The record contains no such letter.

The record will be considered complete as presently constituted. After a review of the record, it is concluded that the petitioner has not established that the beneficiary possesses the experience required for the proffered position.

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.