



U.S. Citizenship
and Immigration
Services



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FILE:



Office: TEXAS SERVICE CENTER

Date:

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:

SELF-REPRESENTED

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.

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for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Texas 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 for entry of a new decision.

The petitioner seeks to classify the beneficiary as an employment based immigrant 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 or professional. The petitioner is a system integration firm. It seeks to employ the beneficiary permanently in the United States as a project engineer. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor (DOL). The director determined that the petitioner had failed to establish that the beneficiary had the requisite two years of work experience as a project engineer as required by the offered position.

On appeal, the petitioner submits additional evidence and asserts that the beneficiary's employment experience complies with the terms of the approved labor certification.

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.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

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 or priority date of the petition is the initial receipt in the DOL's employment service system. 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is February 15, 2001. The visa petition indicates that the petitioner was established in 1995 and has 20 employees. Part B of the approved labor certification (ETA 750), signed by the beneficiary, reflects that the petitioner has employed the beneficiary since October 1999.

As set forth on Part A, item 14, of the ETA-750, the beneficiary must have two years of work experience in the job offered of project engineer. Item 15 specifies other special requirements that are required, such as knowledge of various tape backup systems, SCSI Interface cards, OMRON NSB network support cards, and serial communications between PLCs and computers.

The regulation at 8 C.F.R. § 204.5(l)(3) states:

(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 occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Along with the petitioner's financial documentation and copies of the beneficiary's educational credentials, as evidence of the beneficiary's qualifying employment experience, the petitioner initially submitted a copy of the beneficiary's resume and a letter, dated August 27, 2002, from the petitioner's engineering director, Steve Scearce. Mr. Scearce describes the beneficiary's duties within the petitioner's organization and praises him as a key person within their structure. The letter does not verify the duration of the beneficiary's employment with the petitioner.

On January 10, 2003, the director requested additional evidence from the petitioner to support the claim that the beneficiary possesses the requisite two years of experience as a project engineer. The director instructed the petitioner to establish this experience through letters from the beneficiary's former and current employer(s) stating the beneficiary's job title, specific job duties, and employment dates. The director further advised the petitioner that the experience must be established prior to the visa priority date of February 15, 2001.

In response, the petitioner submits another letter from [REDACTED] dated January 17, 2003. This letter summarizes his duties and states that he was hired full-time in October 1999 and is currently a project manager and SCADA design development engineer. The petitioner also submits a letter, dated May, 28, 1999, from Metalplast LTDA, Cali, Colombia, signed by President [REDACTED] simply states that the beneficiary worked at Metalplast LTDA "at the system information department with the following titles: from December 1993 to June 1994 as a graphic designer and from May 1995 to September 1998 as a computer programmer."

In denying the petition, the director concluded that the letters submitted by the petitioner do not establish that the beneficiary has accrued two years of experience as a project engineer, as of February 15, 2001, the visa priority date. The director noted that [REDACTED] letter failed to describe the beneficiary's job duties at Metalplast LTDA from which it might have been concluded that the beneficiary had acted as a project engineer.

On appeal, the petitioner submits a third letter from [REDACTED] dated February 11, 2003, clarifying that the beneficiary has acted as a project engineer for the petitioner since he was hired on October 9, 1999. The petitioner also submits another letter from Metalplast LTDA. This letter is dated February 10, 2003 and is signed by Hernando Barco as President. [REDACTED] summarizes the beneficiary's programming duties from May 1995 to September 1998 and adds that the beneficiary also managed various projects for other important companies such as "Navisco, [REDACTED] and Propal S.A." He states that although the beneficiary held a job title as a programmer for Metalplast, his "responsibilities included project engineering" and "he worked as a project engineer for [REDACTED] This letter appears to address the director's concern relevant to the beneficiary's past employment experience. The petitioner has established that the beneficiary has two years of employment experience in the job offered as a project engineer.

The petition is not eligible for approval, however, unless the petitioner demonstrates its continuing ability to pay the proffered salary. The petition will be remanded for that purpose, as the director did not address this issue in either her request for evidence or final decision. It is must be observed that the current record fails to establish that the petitioner has demonstrated a continuing ability to pay the proffered salary of \$44,013 beginning as of the

visa priority date of February 15, 2001. Even though the petition was filed in 2002, the most recent financial documentation provided by the petitioner is its federal partnership tax return for the year 2000.¹ The regulation at 8 C.F.R. § 204.5(g)(2) requires a petitioner to establish its continuing ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent resident status. The petitioner must submit either federal tax returns, annual reports, or audited financial statements.

Therefore, in view of the foregoing, the director's decision is withdrawn. The petition is remanded to the director to request additional evidence from the petitioner relevant to its continuing financial ability to pay the proffered wage. 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.

¹ It shows that the petitioner declared ordinary income of -\$310,127. Schedule L reflects that it had -\$925,616 in net current assets. Neither of these funds could cover the \$12,352.62 difference between the proffered salary of \$44,013 and the actual salary paid to the beneficiary in 2000.